


Hot Topics in I-9 Compliance
November 29, 2007

Presented by



Hundreds nabbed in immigration raid
Executives, workers arrested in nationwide move against pallet maker

ICE Raid Leaves Massachusetts Town a Mess

Denver News

ICE Agents Raid Swift Plants in Colo., 3 States Again

Two Workers Arrested At Greeley Plant

POSTED: 4:18 pm EDT, July 11, 2007

Immigration raids Koch Foods Ohio chicken plant

Tue Aug 28, 2007 5:49pm EDT



Department of Justice
United States Attorney Michael J. Sullivan
District of Massachusetts

FOR IMMEDIATE RELEASE
TUESDAY, MARCH 6, 2007
WWW.ASHERADVISORS.COM


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NEW BEDFORD MANUFACTURER AND MANAGER ARRESTED ON CHARGES OF CONSPIRING TO EMPLOY ILLEGAL ALIENS TO WORK IN U.S. THROUGH HIRING OFF IN PROCESS REWARDS FOR REPORT



Audio Portion to Today's Webinar

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- Type and send your question.
- We will answer questions during the Q&A session at the end of the presentation.



Featured Speaker



Angela M. Lopez
Attorney, Badmus Immigration Law Firm, P.C.

Angela has more than 4 years of experience representing and counseling employers in all aspects of immigration law including I-9 compliance and visa issues.



Featured Speaker



Martha James, "Marty"
Attorney, Badmus Immigration Law Firm, P.C.

Marty has more than 9 years of experience providing representation to and counseling employers in all aspects of immigration law including audits, I-9 compliance and visa issues.



Featured Speaker



Ann Massey Badmus
Director, Badmus Immigration Law Firm, P.C.

Ann has more than 15 years of experience providing strategic advice and counsel to employers on issues of immigration law including I-9 compliance, visa processing, LCA compliance, and immigration discrimination.



Webinar Agenda

- How to Complete the NEW I-9 Form
- How to Correct the Most Common I-9 Mistakes
- How to Conduct an Internal I-9 Audit
- How to Respond to Social Security Mismatch Letters
- How to Respond to ICE Raids and Audits
- Question and Answer



I-9 General Rules

- Hire only those persons authorized to work in the United States
- Ask ALL new employees to show documents that establish both identity and work authorization
- Complete form I-9 for every new employee - regardless of nationality



**Look at the Facts
Not the Faces**

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Common Mistakes in Hiring

- Unequal treatment because of citizenship or immigration status
- Unequal treatment because of nationality, which includes place of birth, appearance, accent and language
- Asking for specific documents from employee, such as "Green Card"
- Verifying some people's documents and not others
- Having a citizen-only hiring policy

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Employment Verification

- I-9 Form
- Must begin verification on first day of employment
- Must complete verification within three days of employment

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Section 1 must be completed by employee – in full

Common Mistake: Employee leaves a section blank.

ICE has determined that leaving a portion blank is tantamount to the employee refusing to attest to having authorization to work.



Section 2 must be completed by person viewing the documents.

- Common Mistakes:
- Listing too many documents
 - Not listing the document title, issuing authority, document #, and expiration date
 - Having Employee complete Section 2
 - Asking Employee for specific documents
 - Requiring Employee to show "Green Card"
 - Not listing date employment began
 - Not signing and dating Section 2



If the document listed in List C has an expiration date, you must re-verify when the authorization document expires.

- Common Mistakes:
- * Not re-verifying
 - * Re-verifying everyone, regardless of whether their documents expire
 - * Not completing Section 3 in full when re-verifying



Section 3 must be completed by person viewing the documents when re-verifying

Common Mistakes:

- * Person completing not same person that viewed documents
- * Not listing name of document, document number and expiration date of document
- * Not signing Section 3



Section 3: Employer Review and Certification

The employer must complete this section for each individual to be employed. It must be completed by the employer or an authorized representative of the employer. This section must be completed by the employer or an authorized representative of the employer.

What is the Purpose of This Form?

The purpose of this form is to determine that each new employee is authorized to work in the United States.

When Should the Form I-9 be Used?

All companies, organizations, and institutions, both state and federal, that hire and working in the United States must complete a Form I-9.

Filing the Form I-9

Section 1, Employee: The part of the form must be completed at the time of hire, which is the first day of employment. The employer must retain the Form I-9 in the employer's personnel files in a secure location for inspection by the Department of Homeland Security.

Retention of Records

The employer must retain the Form I-9 for the duration of the employee's employment and for three years after the date of termination.

What is the Paperwork Reduction Act?

The Paperwork Reduction Act (PRA) of 1995 requires that the Department of Homeland Security conduct a periodic review of the information collection burden on the public.

New Instructions for Completing Form I-9



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Instructions for Completing Form I-9, continued



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Revisions to I-9 Form

Only valid version – (Rev. 06/05/07) as of
December 26, 2007



Key Changes to I-9 Form

- I-9 Form Sections 1, 2, 3 remain the same
- Lists of accepted documents to verify identity and work eligibility has changed.



List A

Five documents removed:

- Certificate of U.S Citizenship (Form N-560 or N-562)
- Certificate of Naturalization (Form N-550 or N-570)
- Alien Registration Receipt Card (I-151)
- Unexpired Reentry Permit (Form I-327)
- Unexpired Refugee Travel Document (Form I-571)

One document added:

- Unexpired Employment Authorization Document (I-765, I-688, I-688A, I-688B, I-766)



Examples of documents acceptable for List A

Resident Alien Card (I-151)
 These cards are no longer issued, but are valid indefinitely, or until their expiration date. Recipients of this card are lawful permanent residents. This card is normally referred to as a "green card" and is the equivalent for the Form I-151.



Employed Foreign Passport with I-94 Stamp



Examples of documents acceptable for List A

Employment Authorization Card (I-766)
 Issued by USCIS to allow general temporary employment authorization in the United States. The expiration date is noted on the face of the card.



Temporary Resident Card (I-688)
 Issued by USCIS to allow general temporary resident status under the Employment or Special Agricultural Worker program. It is valid until the expiration date noted on the face of the card or the date it is placed on the back of the card.



Employment Authorization Card (I-688A)
 Issued by USCIS to authorize for temporary resident status after their departure for Employment or Special Agricultural Worker status. It is valid until the expiration date noted on the face of the card or on the watermark placed on the back of the card.



Examples of documents acceptable for List A

Employment Authorization Card (I-688B)
 Issued by USCIS to allow general temporary employment authorization in the United States. The card has gold, interlocking lines across the front. The expiration date is noted on the face of the card.



I-963-964, Arrival/Departure Record

Arrival-departure record issued by DHS to nonimmigrant aliens and other alien registrants. This document indicates the bearer's immigration status, the date that the status was granted, and when the status expires.



Examples of documents acceptable for List B



Examples of documents acceptable for List C



Examples of documents acceptable for List C

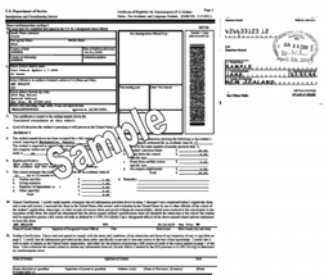


Examples of documents acceptable for List C

I-20 ID Card Accompanied by a Form I-94

Form I-94 for F-1 nonimmigrant students must be accompanied by an I-20 Student ID endorsed with employment authorization by the Designated School Official for off-campus employment or extracurricular practical training. USCIS will issue Form I-94 if Employment Authorization Documents to all students (F-1 and J-1) authorized for a post-completion practical training period. (See page 17 for Form I-94-PSA)

Print




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Examples of documents acceptable for List C

DS-2019 Accompanied by a Form I-94

Nonimmigrant exchange visitors (J-1) must have an I-94 accompanied by an unexpired DS-2019, specifying the sponsor and issued by the U.S. Department of State. J-1 students working outside the program indicated on the DS-2019 also need a letter from their responsible school officer. (See page 17 for Form I-94-PSA)



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I-9 Retention

- All current employees (unless exempt) must have I-9 forms on file.
- Retention date is determined at the time an employee is terminated:
 - 3 years after the date of hire or 1 year after the date the employee's employment is terminated, whichever is later.

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E-Verify

- Web-based Basic Pilot Employment Verification Program
- USCIS and Social Security Administration
- Voluntary participation



I-9 Internal Audit

- Should be conducted annually
- Should be conducted by one not involved in completing Company's I-9s
- May audit all Company I-9s or a random sampling
- Should ensure that all employees on payroll have an I-9



Correcting Errors Found During an In-House I-9 Audit

- New I-9 form should not be substituted for incorrect, old I-9
- I-9 may either be corrected, showing date of correction, or
- New amended I-9 completed and stapled to old incorrect I-9



How to Respond to an Audit

- Don't waive your right to a three-day notice of the audit.
- Do not allow Agents to take original documents off-site.
- Separate I-9s from personnel files.
- Call an experienced immigration attorney immediately upon receipt of an audit notice and do not allow Agents to talk with employees before calling an attorney.



Social Security Mismatch Letters

- Federal Court stays litigation in anticipation of DHS creating new rules
- New regulations would change when an employer is found to have “constructive knowledge” that an employee is an alien not authorized to work in the U.S.
- Creates a “safe harbor”



“Safe Harbor”

- Within 30 days of obtaining SSA letter,
 - Employer must check to see if the discrepancy results from error
 - If discrepancy occurs, Employer must notify SSA or DHS to correct error
 - Employer must request employee to resolve the discrepancy



“Safe Harbor”

- If discrepancy cannot be resolved through these methods:
 - Within 90 days of obtaining SSA letter,
 - Employer must re-verify employee’s identity and authorization to work in the U.S.
- If discrepancy is not resolved and identity and work authorization is not verified using a reasonable verification procedure, Employer must:
 - Terminate the employment of employee, or
 - Face the risk that DHS may find the Employer had constructive knowledge that the employee was an unauthorized alien and violated Section 274(a)(2) of the IRCA rules.



How To Respond to an ICE Raid and Audit

- Ask to see the documents authorizing the agents to search the premises and employees
- Make a copy of the warrant, if one exists
- If no warrant, ICE agents will request permission to visit and interview employees.
- Ask about the purpose and scope of the inspection.
- **Contact your immigration attorney immediately!**



Best Practices for I-9 Compliance

- Implement a robust compliance program
- Prepare for government audits and raids
 - Develop a plan
 - Communicate the plan
 - Train key personnel on the plan
- Conduct Internal Audits and Third Party Audits



Best Practices for I-9 Compliance

- Protect privileged materials including personnel records
- Implement policies and procedures to protect the company and employees
- Consult and retain counsel to evaluate your compliance plan and advise on specific courses of action



Question and Answer Session



"Immigration law is a mystery and a mastery of obfuscation, and the lawyers who can figure it out are worth their weight in gold."

- USCIS spokeswoman Karen Kraushaar.



Legal Notice

- Facts of individual situations differ
- The information provided here is general in nature and should not be relied upon for your specific case
- Consult with an experienced immigration attorney with regard to specific situations you encounter



We Value Your Feedback!

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Thank You!

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