



Employers Must Use A New I-9 Form For 2020

Insights

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The federal government just released an updated Form I-9, and although you aren't required to use the new version until May 1, 2020, best practices dictate that you should start using it immediately. It has been a few years since United States Citizenship and Immigration Services (USCIS) updated the Form I-9, which verifies the identity of new hires and ensures they are authorized to work in the United States. But with this recent announcement, you should take immediate steps to come into compliance or risk financial penalties.

Changes To The Form Are Minor, But Changes To The Instructions Are Important

The new version (which is dated October 21, 2019) brings only a very subtle change to the form itself. Specifically, USCIS revised the Country of Issuance field in Section 1 and the Issuing Authority field (when selecting a foreign passport) in Section 2 to add Eswatini and Macedonia, North, because those countries recently announced name changes.

However, this change is visible only when completing the fillable Form I-9 on a computer. In short, the paper version of the new I-9, except for the date in the lower left-hand corner, will look identical to the current version dated July 17, 2017.

As for changes to the form's instructions, those are a bit more substantive:

- Updated website addresses and other contact information – interestingly, the instructions no longer contain contact information for the Immigrant and Employee Rights Section of the Department of Justice.
- Clarification as to who can act as an authorized representative on behalf of an employer. The instructions make clear that employers can designate “any person” to complete and sign Section 2 of the I-9 on the employer's behalf. The instructions also make clear that the employer, not the authorized representative, is liable for any violations committed in connection with the I-9, “including any violations of the employer sanctions laws committed by” the authorized representative. The lesson here: while you may choose anyone to serve as an authorized representative, choose carefully and make sure they understand how to correctly fill out Section 2.
- Instruction that employers who enter information in Section 2, List A should not enter N/A in Lists B and C (and vice versa).

- Updates on the process for requesting paper Form I-9s (as an alternative to printing them from the USCIS website) and an updated Department of Homeland Security (DHS) Privacy Notice.

Best Practice: Begin Using New Form Immediately

Although you will be able to use this new version or continue using the previous Form I-9 through April 30, 2020, it makes sense to scrap the use of the July 17, 2017 version and begin using the updated version right away. You should recycle all older blank versions you already have printed, and instruct your hiring managers and human resources representatives to download the new Form I-9 for use with new hires from this point forward.

On May 1, 2020, all employers will be required to use the revised form, so it makes sense to avoid any delay and begin use of the new version immediately. It's important to remember, however, you should not require current employees to fill out the new I-9 form. Rather, use the new Form I-9 only for new hires moving forward.

Consequences Of Non-Compliance Can Be Costly

Although the changes to the Form I-9 and its instructions are slight, failure to use the new form and comply by the May 1 deadline can result in large fines. I-9 audits have increased threefold in recent years (from 1,360 to 5,981 per year), while worksite investigations have increased even more dramatically (from 1,691 to 6,848 per year).

Potential fines are also increasing – paperwork violation fines can now range between \$230 to \$2,292 **per employee**. Civil penalties for knowingly employing hiring or employing unauthorized workers currently range from \$573 to \$4,586 **per employee** for the first violation. Second- and third-violation civil penalties can range between \$4,586 up to \$22,972 **per employee**. Arrests and criminal convictions for knowingly hiring or employing unauthorized workers are on the rise as well.

Conclusion

It is unlikely that the Trump administration will slow down DHS's employer-driven immigration compliance mechanisms. Based upon recent actions from the administration to increase enforcement and hire more ICE agents, along with statistics demonstrating significant increases in I-9 audits and worksite investigations, it is increasingly likely you could face enforcement actions in the form of ICE audits, workplace raids, and employee detention.

Accordingly, now is the time to review your I-9s and your compliance policies to minimize exposure should the government show up on your doorstep demanding to see your I-9s. We will continue to monitor the status of all immigration-related activity, including further executive actions, and ongoing and future litigation, and publish updates as additional actions are taken, or information is provided, by the federal immigration agencies, the White House, and the judicial system. Please ensure you are signed up for our legal alert system to receive updates about these and other developments.

If you have any questions about these developments or how they may affect your business, contact any member of our [Global Immigration Practice Group](#) or your regular Fisher Phillips attorney.

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