

Immigration Compliance Alert

REMINDER: All U.S. Employers Must Use New I-9 Form Effective April 3, 2009

All employers must use the new version of the I-9 Form that became effective on April 3, 2009. This new I-9 Form includes a revised list of acceptable documents that may be presented for verification, as well as a new category in the attestation portion of Section 1. The most important change to the form is that expired documents are no longer acceptable. Each document presented for verification must be unexpired, unless it does not have an expiration date (such as a Social Security card).

United States law requires that every employer complete Form I-9, Employment Eligibility Verification ("I-9 Form"), for each new employee within three days of hire. When completing the Form, the employee is required to present original documents that demonstrate both identity and authorization to work in the United States. A list of acceptable documents for I-9 purposes is set forth on the back of the Form. Failure to complete the Form can result in fines and/or imprisonment for the employer.

Section 1 of the I-9 Form, which is completed by the employee, requires that the employee indicate his or her immigration status in the U.S. A new category has been added to Section 1: "A non-citizen national of the United States." This is likely to cause confusion, as this term is not defined on the Form itself. Non-citizen nationals of the United States are from one of the following groups: individuals who were born in American Samoa; certain residents of the Northern Mariana Islands who are not U.S. citizens; and certain individuals who were born abroad to non-citizen U.S. nationals. Though U.S. nationals do not possess full U.S. citizenship, they are not considered "aliens" under

immigration law. They may enter and work in the United States without restriction.

In addition, the new I-9 Form includes a list of documents that employers may accept to establish a worker's identity and employment authorization, known as List A documents. The following documents have been added to List A on the new edition of the I-9 Form:

1. Foreign passports containing the I-551 permanent residence notation printed on a machine-readable immigrant visa (previously, List A included only the I-551 passport stamp and I-551 permanent resident card);
2. The new U.S. Passport Card; and
3. Passports and certain other documents for citizens of the Federated States of Micronesia and the Republic of the Marshall Islands.

Eliminated from List A are several now-obsolete employment authorization documents. However,

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Form I-766, the current version of the employment authorization document, remains on List A.

In conjunction with the release of the new I-9 Form, a new employer handbook has been issued, providing instructions for completion of the I-9 Form. The employer handbook can be found on the U.S. Citizenship and Immigration Services' website: http://www.uscis.gov/files/natedocuments/m-274_3apr09.pdf.

Update On Federal Contractor Regulations Requiring E-Verify

New rules were scheduled to go into effect on January 15, 2009 requiring most federal government contractors to use E-Verify, an electronic employment eligibility verification system operated by the U.S. Department of Homeland Security. E-Verify (formerly known as the Basic Pilot/Employment Eligibility Verification Program) allows employers to electronically confirm the biographical data of employees pursuant to a Memorandum of Understanding entered into among the employer, the U.S. Department of Homeland Security and the Social Security Administration. Due to pending litigation involving these regulations, implementation has been **delayed until June 30, 2009**. We will continue to keep you apprised of developments in this area.

Reminder: H-1B Petitions May Still Be Available For Fiscal Year 2010

In stark contrast to previous years, U.S. Citizenship and Immigration Services ("USCIS") announced in April that they have not yet received enough petitions for H-1B visas to meet the 65,000 numerical cap for fiscal year 2010 commencing in October. H-1B petitions are filed by U.S. employers seeking to hire a specific foreign national in a specialty occupation generally requiring a university degree (such as the sciences, medicine and health care, engineering, mathematics, education, hi-tech). In prior years, demand for these H-1B visas exceeded supply and a lottery was instituted to determine which petitions would be adjudicated. This year, USCIS indicated that, while it did not receive enough filings to reach the

overall H-1B cap, it received close to the number needed to fill the 20,000 exemption for those who have earned the equivalent of a U.S. master's degree or higher.

If you have a recent hire who requires visa sponsorship, you may still be able to file an H-1B visa petition for employment commencing October 1, 2009. Please contact your Vedder Price attorney or **Gabrielle M. Buckley** (gbuckley@vedderprice.com/312-609-7626) for further information.

Worksite Enforcement in the New Administration

In recent weeks, Homeland Security Secretary Janet Napolitano delayed a series of proposed immigration raids and other enforcement actions at U.S. workplaces, asking agents in her department to apply more scrutiny to the selection and investigation of targets as well as the timing of raids. These actions signaled a shift in policy from recent Immigration and Customs Enforcement ("ICE") practices.

In April 2009, new ICE Director Marcy Forman testified before Congress that ICE will continue its enforcement strategy targeting certain employers, particularly those in "sensitive industries." Ms. Forman testified that "ICE has restructured the worksite administrative fine process to build a more vigorous program. ICE has established and distributed to all field offices guidance about the issuance of administrative fines and standardized criteria for the imposition of such fines. We expect that the increased use of the administrative fines process will result in meaningful penalties for those who engage in the employment of unauthorized workers."

Based on these statements, we expect ICE to continue prosecution of employers and targeted businesses and executives. Employers need to take steps to protect themselves from both criminal and civil liability, and should ensure that their immigration compliance policies are current and that they have conducted regular internal audits. These actions go a long way to mitigate damages in the event of an audit, reduce the likelihood of prosecution, and help ensure that their workforce is in compliance with the law.

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #) _____
- An alien authorized to work (Alien # or Admission #) _____ until (expiration date, if applicable - month/day/year)

Employee's Signature	Date (month/day/year)
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Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification *(To be completed and signed by employer.)*

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
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C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title: _____	Document #: _____	Expiration Date (if any): _____
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
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LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST A

Documents that Establish Both Identity and Employment Authorization

LIST B

Documents that Establish Identity

LIST C

Documents that Establish Employment Authorization

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States	
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)	
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)	
4. Employment Authorization Document that contains a photograph (Form I-766)	4. Voter's registration card	4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal	
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	5. U.S. Military card or draft record	5. Native American tribal document	
	6. Military dependent's ID card	6. U.S. Citizen ID Card (Form I-197)	
	7. U.S. Coast Guard Merchant Mariner Card	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)	
	8. Native American tribal document	8. Employment authorization document issued by the Department of Homeland Security	
	9. Driver's license issued by a Canadian government authority		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card	
		11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record		

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

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About Vedder Price

Vedder Price P.C. is a national business-oriented law firm with 250 attorneys in Chicago, New York and Washington, D.C.

The Vedder Price Business Immigration Group

Vedder Price provides a full range of business immigration services. Building on the firm's expertise in corporate compliance and best practices, we work with clients to develop policies and internal processes to ensure compliance with federal and state-level immigration laws and minimize exposure to civil and criminal immigration enforcement. We provide proactive advice to best position a company and its workforce before and after corporate changes, including acquisitions, mergers, divestitures and reorganizations. The firm assists clients in obtaining temporary and permanent immigration status for their executive, managerial and professional employees in virtually every visa category. Together with the firm's tax, benefits, executive compensation, estate planning and employment lawyers, we help clients develop and service their global workforce.

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