

Immigration Law Alert

January 2008

Employers: New Form I-9, Employment Eligibility Verification, Required as of December 26, 2007

The U.S. Citizenship and Immigration Services (USCIS) announced on November 26, 2007, that all employers *must* use the new version of Form I-9, Employment Eligibility Verification, as of December 26, 2007. The newest version of the Form I-9 is reproduced below.

Employers must complete a Form I-9 for each new employee within the first three days of hire and must verify original documents presented by the new employee for completion of the form. After December 26, 2007, employers not using the new Form I-9 face civil penalties of \$110 to \$1,100 for each individual for whom the violation occurred.

The amended version of the Form I-9 contains the following changes:

- The date of the form is revised (Rev. 06/05/07).
- The new form amends the List of Acceptable Documents and specifically removes the following five documents:
 - Form I-151, Alien Registration Receipt Card;
 - Form N-560 or N-570, Certificate of U.S. Citizenship;
 - Form N-550 or N-570, Certificate of Naturalization;
 - Form I-327, Unexpired Reentry Permit; and
 - Form I-571, Unexpired Refugee Travel Document.

- One new document was added to List A—the most recent version of Form I-766, Employment Authorization Document—while all similar documents have been combined into one entry on List A.
- The description of one of the List A documents has been revised to more clearly describe what is required. A foreign national presenting an unexpired foreign passport must also provide “an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien’s nonimmigrant status, if that status authorizes the alien to work for the employer.”
- The amended Form I-9 Instructions now indicate that the employee does *not* need to provide his

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or her Social Security number in Section 1 of the form unless the employer participates in the USCIS Electronic Employment Eligibility Verification Program (E-Verify Program—formerly known as Basic Pilot Program).

The Form I-9 has been amended to ensure that it conforms with regulations promulgated in 1997. USCIS has also issued an updated, more complete “Handbook for Employers” (link to <http://www.uscia.gov/files/nativedocuments/m-274.pdf>). The new Handbook and Form I-9 may be found on the Vedder Price website (<http://www.vedderprice.com>).

Employers may wish to use the introduction of the new Form I-9 as an opportunity to provide I-9 compliance training to employees involved in the hiring and verification process. If you desire additional compliance resources (e.g., in-depth I-9 training, an immigration/I-9 internal audit, or an immigration compliance policy), please contact Gabrielle M. Buckley or P. Michelle Jacobson.

Employer Liability for Use of Subcontractors

Employers are *not* required to and should not complete Form I-9 for subcontractors who provide services to the employer. However, in instances where the employer contracts or subcontracts to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien, the employer shall be considered to have “hired” the alien for employment in the United States in violation of the Immigration and Nationality Act. We strongly recommend that employers ensure that their agreements with subcontractors clearly set forth the subcontractors’ obligations relating to immigration law compliance and provide for indemnification and attorneys’ fees in the event the employer is prosecuted for noncompliance with the law.

Social Security “No-Match” Regulations to Be Rewritten

In an update to the recent Department of Homeland Security (DHS) no-match regulations that set forth procedures for employers to follow in response to a Social Security no-match letter, the Federal District Court for the Northern District of California issued a preliminary injunction in October preventing the DHS from implementing the regulations. On November 23, 2007, the DHS filed a motion with the federal district court abandoning its attempt to enforce the no-match regulations and stating that it will seek to rewrite the regulations in order to pass legal muster. The DHS plans to publish the revised regulations by March 2008. In addition, the Social Security Administration has announced that it will not issue no-match letters this year. We will keep you apprised of any developments in this area.

State and Local Law Alert

Employers now need to ensure that they are in compliance with state and local immigration laws, in addition to federal immigration laws. A number of states have implemented provisions regarding employers’ obligations, many of which went into effect on January 1, 2008. Below please find a synopsis of some of the most relevant provisions:

Arizona—Effective January 1, 2008, the Legal Arizona Workers Act prohibits employers from intentionally or knowingly employing unauthorized workers. First-time violators who knowingly employ unauthorized workers will be subject to a three-year probationary period and may have their business licenses suspended for up to ten days. First-time violators who intentionally employ unauthorized workers will be subject to a five-year probationary period and will have their business licenses suspended for a minimum of ten days. Subsequent violations during the probationary period will lead to a permanent revocation of an employer’s Arizona business license. All employers in Arizona must verify the work authorization of all new hires by utilizing the

E-Verify Program. The State Attorney General or Arizona County Attorney must conduct an investigation of possible violations of the Act upon receipt of a complaint.

Arkansas—Effective August 1, 2007, Arkansas prohibits state agencies from entering into contracts with businesses that knowingly employ or contract with “illegal immigrants.” Prospective contractors and subcontractors employed by the state under contracts valued at \$25,000 or more are required to certify that they do not, at the time of certification, employ or contract with undocumented workers. Violators may be liable to the state for any actual damages incurred.

Colorado—Effective January 1, 2007, all employers, regardless of size or trade, must maintain copies of documentation in support of Form I-9. In addition to completing a Form I-9, Colorado employers must complete an affirmation of legal work status within twenty days of a new hire that confirms the employer has met the following four requirements: (1) it has examined the legal work status of each new employee hired after January 1, 2007; (2) it has retained copies of required I-9 documents for examination; (3) it has not altered or falsified the documents presented by the employee; and (4) it has not knowingly hired an unauthorized worker. The employer must keep an electronic or written copy of the affirmation with supporting documents. Additionally, since August 7, 2006, state contractors have been required to verify the legal status of all new hires using the DHS’s E-Verify Program. Lastly, employers seeking to qualify for a grant, loan, or performance-based incentive from the Colorado Economic Development Commission must verify the work authorization and prove the legal status of all employees. Violators may be required to repay the award and are ineligible for an economic development incentive for five years from the date of repayment.

Illinois—*Effective January 1, 2008, the Illinois Right to Privacy in the Workplace Act would prohibit the specified use of the E-Verify Program until the program meets specified quality control benchmarks. Pursuant to the Act, once the E-Verify Program is able to meet the specified benchmark, employers would be able to participate in the program but would be required to meet several additional requirements to comply with

new workplace privacy provisions of Illinois employment law. The Act indicates that employers using the E-Verify Program before the quality control benchmark is reached or later using the program without meeting the workplace privacy requirements will be subject to penalties. Under the Act, job applicants, employees, and the Illinois Department of Labor may file a lawsuit to compel compliance with the Act. If an employer continues to be noncompliant, it may be sued for actual or statutory damages.

**Note: This Illinois law is the subject of federal litigation and has been stayed until February 15, 2008.*

Oklahoma—Effective November 1, 2007, Oklahoma requires all public employers and their contractors and subcontractors to use a “status verification system” to verify the immigration status of employees. The state recognizes the E-Verify Program and the Social Security Number Verification Service as acceptable forms of status verification systems. The requirement to use a status verification system becomes effective July 1, 2008 and applies to contracts entered into for the physical performance of services after November 1, 2007, and only to new employees hired after that date.

H-2B Cap Reached for Temporary Workers

USCIS has announced that it has received a sufficient number of petitions to reach the congressionally mandated H-2B cap for fiscal year 2008. USCIS established January 2, 2008, as the “final receipt date” for new H-2B worker petitions requesting employment start dates before October 1, 2008. The final receipt date is the date on which USCIS determined that it had received enough cap-subject petitions to reach the limit of 66,000 H-2B workers for fiscal year 2008.

USCIS will apply a computer-generated random selection process to all petitions that are subject to the cap and were received on January 2, 2008. Petitions for workers who are currently in H-2B status do not count toward the congressionally mandated biannual H-2B cap. USCIS will continue to process petitions filed to

extend the stay of a current H-2B worker in the United States, change the terms of employment for current H-2B workers and extend their stay, or allow current H-2B workers to change or add employers and extend their stay. USCIS will reject petitions for new H-2B workers seeking employment start dates prior to October 1, 2008.

USCIS Advisory on Processing Times

On November 26, 2007, USCIS issued an Advisory on Processing Times. USCIS indicated that it has received a significant increase in the number of applications filed. In July and August 2007, USCIS received nearly 2.5 million applications and petitions, compared to 1.2 million applications and petitions received in the same time period last year. As a result, average processing times for certain application types “may grow longer.” USCIS noted that naturalization applications filed after June 1, 2007, may take approximately 16 to 18 months to process.

U.S. Citizens Require Passports under Western Hemisphere Travel Initiative

Effective October 1, 2007, U.S. citizens traveling by air to Canada, Mexico, the Caribbean and Bermuda must present a passport or other Western Hemisphere Travel Initiative (WHTI) compliant document to enter or depart from the United States. The previous exception, where U.S. citizens could travel by air without a passport upon providing proof that a U.S. passport application had been made, is no longer applicable. As of January 1, 2008, all adult travelers are required to present proof of citizenship, such as a birth certificate, and proof of identity, such as a driver’s license, when entering the U.S. through land and sea ports of entry.

H-1B Petitions May Be Filed on April 1, 2008 for the Next Fiscal Year

Many employers are painfully aware that the cap of 65,000 regular H-1B visas was hit the first day we were permitted to file H-1B petitions for this fiscal year (April 1, 2007). Please ensure that you have identified any employees or prospective employees requiring H-1B status for the upcoming fiscal year beginning October 1, 2008. The first day that we can file petitions for next fiscal year is April 1, 2008. We strongly recommend that all employers’ H-1B petitions be ready to be filed on March 31, 2008 to ensure they arrive on April 1, 2008.

I-9 Forms

OMB No. 1615-0047; Expires 06/30/08
Form I-9, Employment Eligibility Verification

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

Please 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 eligible 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 or national of the United States

A lawful permanent resident (Alien #) A _____

An alien authorized to work until _____ (Alien # or Admission #) _____

Employee's Signature _____ Date (month/day/year) _____

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 examined 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 eligible 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) _____

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment of _____

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 eligible to work in the United States, and if the employee presents 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) _____

Form I-9 (Rev. _____)

LISTS OF ACCEPTABLE DOCUMENTS

LIST A Documents that Establish Both Identity and Employment Eligibility	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)	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. U.S. Social Security card issued by the Social Security Administration (other than a card stating it is not valid for employment)
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 or Form DS-1350)
3. An unexpired foreign passport with a temporary I-551 stamp	3. School ID card with a photograph	3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)	4. Voter's registration card 5. U.S. Military card or draft record	4. Native American tribal document 5. U.S. Citizen ID Card (Form I-197)
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer	6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner Card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority	6. ID Card for use of Resident Citizen in the United States (Form I-179) 7. Unexpired employment authorization document issued by DHS (other than those listed under List A)
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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VEDDER PRICE P.C.

About Vedder Price

Vedder Price P.C. is a national, full-service law firm with over 250 attorneys in Chicago, New York, Washington, D.C. and New Jersey.

The Vedder Price Business Immigration Group

U.S. companies—whether large or small—increasingly hire employees from around the globe. The search for talent within industries such as financial services, biomedical, high-tech, pharmaceutical, automotive, engineering and other key sectors of the U.S. economy is relentless in its intensity. In response to the needs of companies to manage their internationally mobile workforce, the law firm of Vedder Price has created a Business Immigration Practice Group, designed specifically to serve the immigration law and compliance needs of companies throughout the country. In addition, the firm provides counsel and assistance with respect to all types of employment-related immigrant and nonimmigrant visa categories.

Specific services include:

- Determining and applying for the most appropriate visa categories for individuals who intend to stay temporarily in the United States for employment or other business-related reasons.
- Preparation and processing of permanent resident visas for executives and other professional employees.
- Due diligence regarding immigration law issues in corporate mergers, acquisitions, divestitures and other forms of corporate reorganization.
- Counseling employers regarding compliance with immigration laws (IRCA) in order to avoid civil and criminal penalties.
- Assisting in processing visa applications and resolving other State Department matters in U.S. embassies and consulates around the world.
- Assisting employers with their non-U.S. immigration needs through our network of attorneys licensed in other countries.

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