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## **NEW I-9 FORM REQUIRED AFTER FEBRUARY 1, 2009**

Beginning February 2, 2009, there will be a new I-9 Form for verifying employment eligibility of new employees. In addition, the verification process will change slightly. You should be prepared for these changes.

### **Background**

The Department of Homeland Security issued proposed regulations in mid-December that are slated to take effect 45 days after the date of issue. The new regulations narrow the list of acceptable identity documents and specifically prohibit an employer from accepting expired documents as forms of identification under either List A or B, specifically eliminating Forms I-688, I-688A, and I-688B (Temporary Resident Card and older versions of the Employment Authorization Card/Document) because these cards are no longer being issued, and any that were in circulation have expired. DHS wanted to be sure that all documents presented for use in the Form I-9 process were valid and reliable for identification and employment authorization. Expired documents may not be valid and are prone to counterfeit and fraud. If a document does not contain an expiration date, it is considered valid.

The following summarizes the changes in the New I-9 form:

#### **General Clarifications:**

- No expired document will be acceptable for Form I-9 purposes – adjectives “expired” and “unexpired” will no longer modify any List A, B or C document; the new general rule that *unexpired* is a condition that must be met for any I-9 document to be acceptable will apply to all documents.
- Form I-9’s use of the term *employment eligibility* has been changed to *employment authorization*; the revised term will be used from the effective date forward.
- Regulatory references to INS has been replaced by references to DHS or components.

#### **List A Changes:**

- Eliminates Forms I-688, I-688A, and I-688B (Temporary Resident Card and outdated Employment Authorization Documents).
- Adds foreign passports containing certain machine-readable immigrant visas to List A.

- Adds valid passports for citizens of the Federated States of Micronesia (“FSM”) and the Republic of the Marshall Islands (“RMI”) as valid identity/employment authorization, when presented with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the U.S. and these entities.

#### List C Changes:

- References to the SSA card will be revised from the current “Social Security Number Card” to the statutorily correct terminology: *Social Security Account Number Card*.
- The description of the annotation on an unacceptable SSN card has changed to update the restriction to current terminology.
- Forms FS-545 and DS-1350 are listed by their actual names rather than by a general purpose term (*Certification of Birth* and *Certification of Report of Birth*, respectively).

#### Section 1 Changes:

- New categories replace Citizen or National of the United States: the two new categories are *Citizen of the United States* and *Non-Citizen National of the United States*.
- The Section 1 attestation (bottom box) will be changed from “Alien Authorized to work until \_\_\_/\_\_\_/\_\_\_ (Alien # or Admission #)” to “*Alien Authorized to work until (expiration date, if applicable, month/day/year) \_\_\_/\_\_\_/\_\_\_.*”
- Bottom box instructions are revised to clarify that the work authorization of temporary aliens whose work authorization does not expire (asylees, refugees, RMI and FSM aliens) does not require re-verification unless they present Form I-766 to satisfy Section 2 (in such case, Section 2 requires re-verification but not Section 1).

The new I-9 Form (dated 06/30/09) has not yet been officially published by the USCIS. According to the USCIS, the *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* will be updated to reflect these changes, and the new I-9 Form will be available on the USCIS website in the near future. **The current version of the Form I-9 (dated 06/05/2007) will no longer be valid after February 2, 2009.**

Undoubtedly, many vendors will be offering to sell employers the new I-9 Form and/or the I-9 Handbook. Remember, after publication, both of these documents will be available *for free* on the USCIS website ([www.uscis.gov](http://www.uscis.gov)) under the Tab “Immigration forms”.

If you have any questions about this new requirement, please contact any of the attorneys at Skoler, Abbott & Presser, P.C. at (413) 737-4753.