

ATTENTION: H.R. MANAGERS:
EMPLOYERS MUST USE NEW FORM I-9 BEGINNING APRIL 3



by

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April 3, 2009: Effective April 3, 2009, all employers must use the most recent version of the Form I-9 (Employment Eligibility Verification) to verify the employment eligibility of all new hires and to re-verify current employees whose employment authorization is expiring and who are therefore subject to the law's re-verification requirements.

The current version of the Form I-9 shows a revision date of **02/02/09** in the lower right corner of the form. This is the only acceptable version of Form I-9 beginning April 3, 2009. The new Form I-9 can be found online at <http://www.uscis.gov/files/form/i-9.pdf> The 2-page form looks deceptively simple to complete, but can be fairly complicated in a number of situations due to the law's complexity. To that end, the Department of Homeland Security has updated its employer handbook for completing the Form I-9. That handbook (again, an instruction manual for employers in dealing with the Form I-9 process) is 65 pages long! It too can be found online at <http://www.uscis.gov/files/natedocuments/m-274.pdf> Failure to use the proper Form I-9 or to improperly complete the Form I-9 can result in fines and penalties to employers.

The Form I-9 has been revised in order to bring the Form I-9 into compliance with U.S. immigration laws that have been in place since 1996! (Yes, it's taken over 13 years!) In particular, the new Form I-9 has revised the list of acceptable documents which an employee can present to an employer as part of the I-9 process. Certain forms of documentation which were previously acceptable for Form I-9 purposes have been eliminated. All documents used in the I-9 process must now be unexpired.

In addition, an important part of Section 1 of the Form I-9 has been revised. In Section 1, the employee is now required to check one of four possible boxes to indicate his immigration status. The four choices under the current form I-9 are: (1) a citizen of the United States; (2) a non-citizen national of the United States; (3) a lawful permanent resident; or (4) an alien authorized to work. Under previous versions of the Form I-9, the first two choices were combined such that an employee could check a box indicating he was either a U.S. citizen or U.S. national. This change (i.e., splitting the boxes into 2 separate choices) could result in a finding of making a false claim to U.S. citizenship for those individuals who are not in fact U.S. citizens but who check the box claiming to be a U.S. citizen. If an immigration officer determines that a false claim to U.S. citizenship has been made after September 30, 1996, the individual is considered both "inadmissible" and "deportable", thus ineligible to legalize his or her status. Unlike most other grounds

of inadmissibility or deportability, there is virtually no waiver to overcome a false claim to U.S. citizenship. Under the old version of the Form I-9, if an individual checked the combined "U.S. citizen or U.S. national" box, it was arguable whether the individual was in fact claiming to be a U.S. citizen or a U.S. national, thus making it a bit more difficult for an immigration officer to conclude that he or she was falsely claiming to be a U.S. citizen. I suspect that, as time goes by, immigration officers may question how an undocumented immigrant applying for an immigration benefit completed a previous Form I-9 with an eye towards determining if a false U.S. citizenship claim was ever made.

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