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USCIS ISSUES NEW FORM I-9 ALL EMPLOYERS MUST USE NEW FORM BY JANUARY 22, 2017

By:

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On November 14, 2016, the USCIS issued a revised version of the Form I-9. The newest version is dated 11/14/2016 on the bottom left corner and has the expiration date of 08/31/2019 on the upper right corner. The new version retains many of the features of the 2013 Form I-9, but the 2016 Form I-9 is an interactive PDF designed to be completed on the computer. Employers can still print the Form I-9 and complete the paper version. All employers must begin using the new Form I-9 no later than January 22, 2017. Between now and January 22, 2017, employers may continue to use the Form I-9 issued in March 2013.

Employers who complete the Form I-9 electronically will have access to new electronic features such as a “?” link next to each box that provides instructions and information regarding how to complete the box, prompts with certain boxes to remind the employee or employer to enter information, drop down lists for filling in states, document types, and issuing authority and a drop down calendar for completing dates. In addition, there are prompts to identify certain errors to help the employer ensure that the Form I-9 is complete.

The new Form I-9 cannot be signed electronically. If the employer completes the interactive PDF, it must print the PDF and have the employee and preparer/translator (if applicable, sign Section 1 and the employer representative must sign Section 2. The Form I-9 is not considered complete until it is signed. When it is completed electronically, the new I-9 form automatically generates a QR code, which may be used by ICE during audits.

Although the most significant change is the new interactive instructions, prompts, and drop-down boxes, USCIS also made some changes that are supposed to make the I-9 easier to understand and complete. More lines were added between boxes to separate and clarify responses. In Section 1, USCIS changed “other names used” to “other last names used.” Additionally, under the preparer or translator section, the employee must check a box stating that no preparer or translator was used or check a box that the employee did use a preparer or translator, and the preparer or translator must complete their information. The 2016 Form for the first time will permit employees to enter information on more than one preparer/translator.

In Section 2, the fields to enter the employee’s name are now separated so that last name, first name, and middle initial are in separate boxes. USCIS also added an additional box for the

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employer to enter the citizenship status that the employee checked on Section 1. If the employer is using the computer form, it will automatically generate this information in Section 2.

The interactive “smart” PDF contains a link at the top to the Form I-9 instructions. The instructions have been expanded from 6 pages to 15 pages. The increase in instruction pages is the result of formatting that is supposed to make the instructions easier to read and to explain the new features of the I-9, such as the prompts and drop-down menus. Employers who do not complete the form electronically are required to make all 15 pages of the instructions available to the employees. Companies may want to print the instructions and put them on bulletin boards.

It is likely that under a Trump Administration that the number of worksite enforcement audits will increase. Employers should take steps to ensure that they are prepared for an I-9 audit. Companies should be completing internal I-9 and E-Verify training regularly, conducting internal audits and ensuring immigration compliance is occurring at their companies. Employers should ensure that the company has a fully complete Form I-9 for every employee hired after November 6, 1986. Employers who use E-Verify should also ensure that they are properly completing E-Verify, keeping any Further Action Notices, and following proper procedures. The Cavanagh Law Firm offers a wide array of legal services involving the Form I-9, E-Verify, immigration compliance, audits, and employment law issues including training employers to understand their immigration compliance obligation, while avoiding harassment, discrimination, and retaliation.



Julie Pace's practice handles employment law, handbooks, drug and alcohol policies, I-9 and E-Verify compliance, OSHA, independent contractor and alleged misclassification issues with DES and other government agencies, and defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, and wrongful discharge, and against charges by the EEOC or ACRD. She handles matters involving OSHA, ICE, OFCCP, DOL, NLRB, ADA, FMLA, ERISA, ACA, Davis-Bacon, FAR, SCA, government contracts, and wage and hour laws. She regularly provides training to companies and assists with investigations. Julie can be reached at 602.322.4046 or jp pace@cavanaghlaw.com



Dave Selden's practice focuses on defending employers in employment and commercial litigation relating to the full range of employment issues, including but not limited to wrongful termination, non-competes, independent contractor and alleged misclassification issues with DES and other government agencies, defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, and breach of fiduciary duties, and against charges by the EEOC or ACRD. He handles matters involving OSHA, ICE, OFCCP, DOL, NLRB, ADA, FMLA, Davis-Bacon, FAR, SCA, government contracts, and wage and hour laws. Dave can be reached at 602.322.4009 or dselden@cavanaghlaw.com

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