



Employment Law Bulletin

August 2017

Déjà Vu – A New Form I-9 To Verify Identity and Employment Authorization

The US Department of Homeland Security recently released a revised Form I-9 all employers must use effective September 18, 2017. Wait, wasn't the Form I-9 just updated? Ah yes, in fact the Form I-9 and corresponding Instructions and Handbook for Employers received a major overhaul in November 2016, but it has been revised again. Here are answers to frequently asked questions about the new Form I-9:

When must I begin using the new Form I-9?

All employers must use the new form with new hires starting September 18, 2017. After that date, prior forms are no longer acceptable.

Can I continue using the current form until September 18, 2017?

Yes, the current Form I-9 with a revision date of 11/14/16 can be used until September 17, 2017. However, after that date, no other versions are acceptable.

Can I start using the new Form I-9 now?

Yes, employers may begin using the new form now and in fact, we recommend they do so. The new form can be found online at <https://www.uscis.gov/i-9>.

Do I need to go back and have my current employees complete the new Form I-9?

No. In fact, federal and state law prohibit employers from doing so. The new form should only be used with new hires going forward.

How can I tell the difference between the current Form I-9 and the new Form I-9?

The forms are identified by their revision dates which are found in the lower left hand corner of the documents. The current form says "Form I-9 11/14/2016." The new form

says "Form I-9 07/17/2017." Be sure to focus on the revision dates, because both the new and the old forms have the same expiration date (08/31/2019) in the upper right hand corner. Geez, could they make this any more confusing?

What is the difference between the Old and the New Forms I-9?

There are no substantive changes to the portions the employee and employer complete, but List C of the List of Acceptable Documents was revised to add a new document (the Consular Report of Birth Abroad), and combine the certifications of report of birth issued by the Department of State.

Were there any changes to the Instructions for Form I-9?

Yes, in addition to revising the Form I-9 itself, the 15 page "Instructions for Form I-9" were also revised. However, the change is only in the name of the referenced agency responsible for responding to employer questions. Nevertheless, the updated Instructions must be made available to each person while completing a Form I-9. They can be found online at <https://www.uscis.gov/sites/default/files/files/form/i-9instr.pdf>. We recommend that you print the Instructions and put each page in a plastic sleeve in a binder that can be provided to the new employee to reference when they are completing the Form I-9.

What about the Handbook for Employers? Did they change that too?

Yes, even the handy reference book for employers was revised to reflect the corresponding changes to the Form I-9 and the Instructions. The revised Handbook can be found online at <https://preview.uscis.gov/i-9-central/handbook-employers-m-274>. It continues to be a very useful reference to employers and answers many common questions about completing the Form I-9. It even has pictures of what the various acceptable documents look like.

While the Form I-9 has changed again, one thing hasn't – the employer's obligation to have complete, compliant and accurate Forms I-9 on file for every current employee, and for terminated employees for three years from the date of hire or one year from the date of termination, whichever is later. Employers who fail to meet this obligation face stiff fines in the event of an I-9 audit.

Contact an SMT employment attorney if you have questions about the I-9 requirements or if you would like us to audit your I-9s to make sure they are complete, compliant and accurate.

School Activities Leave

As the start of a new school year approaches, consider brushing up on your organization's obligations to provide school activities leave to employees. See our Employment Law Bulletin from September 2016 found [here](#) on our website.

No Se Habla Español?

SMT's employment attorneys can provide your company with employment policies, forms and employee disciplinary documentation in Spanish. Providing such important information to employees in the language they understand is critical to employee performance, providing a welcoming diverse work environment, and protecting your company against employment claims. Contact an SMT attorney today to get started.

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