

EMPLOYMENT LAW

A L E R T

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

USCIS Revises Employment Eligibility Verification Form I-9

November 15, 2007

On November 7, 2007, the U.S. Citizenship and Immigration Services (USCIS) released a revised Employment Eligibility Verification Form I-9 designed to be more readable and user-friendly.

The Immigration Reform and Control Act (IRCA) requires all employers to make an in-person inspection of original documents that show an employee's identity and his/her eligibility to work in the United States. A record of the employer's verification is made by completion of Form I-9 for each employee hired in the United States. Section 1 of the Form I-9 must be completed on or before the employee's first day of hire. Section 2 of the Form I-9 must be completed within three days of the employee's actual start of employment. Employers must maintain I-9 forms in their records until the latter of three years after the date of hire or one year after the date of termination. Now when employers complete employee verifications, they must use the Form I-9 with a revision date of June 5, 2007, for all employees hired on or after November 7, 2007, as well as for any existing employees who require re-verification.

What changed? The following five documents from List A of the "List of Acceptable Documents" have been removed:

- Certificate of U.S. Citizenship (Form N-560 or N-570);
- Certificate of Naturalization (Form N-550 or N-570);
- Alien Registration Receipt Card (Form I-151);
- Unexpired Reentry Permit (Form I-327); and
- Unexpired Refugee Travel Document (Form I-571).

One document—the Employment Authorization Document (Form I-766)—has been added to List A of the "List of Acceptable Documents," and all the Employment Authorization Documents with photographs that are in circulation have been included as one item on List A.

Additionally, employees are no longer required to provide their Social Security Number in Section 1 of Form I-9, unless the employee is employed by an employer who participates in E-Verify. The section on photocopying and retaining Form I-9 now includes information about electronically signing and retaining I-9 forms.

Employers will be provided a 30-day transition period, beginning on the date the Department of Homeland Security (DHS) publishes the revised Form I-9 in the Federal Register. Once the 30-day transition period expires, employers who fail to use the revised Form I-9 may be subject to all applicable penalties under section 274A of the INA, 8 U.S.C. 1324a, as enforced by U.S. Immigration and Customs Enforcement (ICE).

Revisions also have been made to M-274, *Handbook for Employers, Instructions for Completing the Form I-9*. Both the revised Form I-9 and the handbook are available online at www.uscis.gov.

As a follow-up to a previous Employment Alert discussing the New Safe Harbor on SSA No-Match Letters, the Social Security Administration (SSA) recently announced that it will not be sending out no-match letters to employers based on the 2006 tax year. This decision by the SSA means that it is not likely they will send out any letters until at least the Spring of 2008. The SSA is reacting to the U.S. District Court for the Northern District of California's October 10, 2007, decision in *AFL-CIO, et al. v. Chertoff, et al.* (N.D. Cal. Case No. 07-CV-4472 CRB), in which the California district court issued a preliminary injunction enjoining and restraining the DHS and the SSA from implementing the Final Rule entitled "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter."

Bass, Berry & Sims Labor and Employment Attorneys

Karen L.C. Ellis
(615) 742-6226
kellis@bassberry.com

Robert W. Horton
(615) 742-7708
rhorton@bassberry.com

William N. Ozier
(615) 742-6232
bozier@bassberry.com

Matthew M. Scoggins III
(865) 521-2025
msscoggins@bassberry.com

Davidson French
(615) 742-6240
dfrench@bassberry.com

Alonda W. McCutcheon
(615) 742-7717
amccutcheon@bassberry.com

Justin A. Page
(615) 742-7786
jpage@bassberry.com

Annie M. Warnock
(615) 742-6517
awarnock@bassberry.com

Tim K. Garrett
(615) 742-6270
tgarrett@bassberry.com

Michael S. Moschel
(615) 742-6297
mmoschel@bassberry.com

Leslie G. Sanders
(615) 742-7711
lsanders@bassberry.com

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NASHVILLE

315 Deaderick Street
Suite 2700
Nashville, TN 37238-3001
(615) 742-6200

KNOXVILLE

1700 Riverview Tower
900 S. Gay Street
Knoxville, TN 37902
(865) 521-6200

MEMPHIS

The Tower at Peabody Place
100 Peabody Place, Suite 900
Memphis, TN 38103-3672
(901) 543-5900
