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Hot Topic: Changes Affecting the I-9 Form (2005)

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MTAS

Municipal Technical Advisory Service

*In cooperation with the
Tennessee Municipal League*



January 24, 2005

CHANGES AFFECTING THE I-9 FORM

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On October 30, 2004, President George Bush signed legislation (H.R. 4306) that makes some modification to the documents acceptable to verify employability under the Immigration Reform and Control Act of 1986. The Act was an initial attempt to stem the stream of undocumented workers into the country by making it illegal for employers to knowingly hire persons who are not authorized to work in the United States.

The Immigration and Nationality Act as amended by the Immigration Reform and Control Act requires employers to check documents to confirm the identity and work eligibility of all persons hired after November 1986. To remain in compliance with the act, employers must

1. Hire only those persons authorized to work in the United States;
2. Ask all new employees to show documentation that establishes both identity and work authorization; and
3. Complete the INS Employment Eligibility Verification Form I-9 for every new employee—U.S. citizen and non-citizen.

Non-compliance with the Form I-9 requirements may result in sanctions against the employer. Further, the law also prohibits discrimination in hiring and firing on the basis of citizenship status or national origin. It is unlawful for an employer to knowingly hire, recruit, or refer any individual who is not

authorized to work in the U.S. It is also unlawful to continue to employ an undocumented worker or one who loses authorization to work.

Employers must treat all job applicants and employees equally—whether they are U.S. citizens or non-citizens. This means that employers may not discriminate in hiring, firing, recruiting, or referring for a fee, nor are employers permitted to retaliate against an employee who has filed a discrimination charge or participated in an investigation.

Employers may hire anyone whose documents prove identity and work authorization in accordance with the I-9 requirements. There are many documents and combinations of documents that are acceptable, as long as they appear to be reasonably genuine.

On September 30, 1997, an interim rule eliminated several documents that were formerly considered acceptable. These eliminated documents are as follows:

1. Certificate of U.S. Citizenship,
2. Certificate of Naturalization,
3. Alien Registration Receipt Card Form I-151,
4. Unexpired Reentry Permit, and
5. Unexpired Refugee Travel Document.

Unfortunately, the back of the current I-9 form, which lists the acceptable document(s), has not been updated to reflect these changes.

Continued acceptance of these documents as

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proof of valid work authorization is incorrect and will expose an employer to liability.

The current versions of the I-9 Form and the Handbook for Employers are dated 11/21/91. Both the Form I-9 and handbook are undergoing revisions to reflect the changes in the U.S. immigration laws. A revised Form I-9 may become available in 2005; however, a release date has not been determined. The U.S. Citizenship and Immigration Service (USCIS) will conduct outreach and make education materials available to employers when a revised Form I-9 is completed.

To compound the problem, the new rule (H.R. 4306) also permits a new document, Form I-766 (Employment Authorization Document), to be used as a proof of valid work authorization. This additional form, however, is also not available nor is it noted on the back of the current I-9 form.

The most significant change to the legislation is that it now allows for electronic signing of the I-9 form as well as electronic storage of

completed forms. This allows employers to begin accepting electronically signed document forms effective April 30, 2005. Now employers can computerize their I-9 form process and use software applications to alleviate many of the problems associated with manual completion of the I-9 form.

H.R. 4306 also permits the electronic storage of I-9 forms. Under the old regulations, I-9 records were permitted to be transferred onto microfilm or microfiche format. I-9 forms may now be stored as .pdf files. The .pdf file is important because it allows the employer to maintain the integrity and appearance of the form. Automating the process promotes uniform and accurate completion of the form.

For more information about the changes to the immigration and nationalization forms, please contact your MTAS management or HR consultant. Information is also available through the U.S. Department of Justice (<http://www.usdoj.gov/immigrationinfo.htm>) or the U.S. Citizenship and Immigration Services (<http://uscis.gov/graphics/howdoi/faqueev.htm>).

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