

Employers must start using new form I-9 on May 1, 2020

Related Professionals

David J. Garrett
919.653.7802
dgarrett@nexsenpruet.com

Practices

Employment & Labor Law

02.19.2020

On Jan. 31, 2020, U.S. Citizenship and Immigration Services (USCIS) published a new Form I-9, Employment Eligibility Verification Form, version date of “Rev. 10/21/2019,” that all employers must begin using on May 1, 2020.

Until then, employers may continue using the current version of Form I-9 (Rev. 07/17/2017 N), which will provide companies several months to make necessary updates to their onboarding processes. Only the most recent version of Form I-9 is available on the USCIS website, however.

Employers should not “update” their existing Form I-9s to the new form for current employees who already have a properly completed Form I-9, unless re-verification is required.

What is different in this new version? Not much. On the paper version of the form, the unfillable version of Form I-9 (which I still encourage employers to use instead of using the “fillable” Adobe version of the form), only the version date and the Office of Management and Budget date have changed. But despite these minor changes, as of May 1, 2020, employers using the old version of the form (Rev. 01/17/2017 N) will be in violation of Section 274A of the Immigration and Nationality Act (INA), enforced by U.S. Immigration and Customs Enforcement (ICE) as a “substantive error.”

Changes have been made to the Instructions to Form I-9 that clarify a few items: who can act as an authorized representative (spoiler alert: anyone the company designates); that a company does not need to insert “N/A” on unused lines in the List A, B and C columns; a notation that the List C Employment Authorization Document issued by the Department of Homeland Security is not the same as the Employment Authorization Document (Form I-766) from List A; and for List B, it clarifies that the identification card issued by a federal, state or local government agency is not the same as a “driver’s license or ID card issued by a State or outlying possession of the United States.”

The fillable Form I-9 also changed the names of two countries in the drop-down fields for the Country of Issuance field in Section 1 and the Issuing Authority field in Section 2 when selecting a foreign passport: Eswatini (formerly known as Swaziland) and North Macedonia (formerly the Republic of Macedonia).

Key takeaway: Start using the new Form I-9 no later than May 1, 2020. The changes are not substantial, but failure to use the new form version is a violation of Section 274A of the INA.

Our Insights are published as a service to clients and friends. They are intended to be informational and do not constitute legal advice regarding any specific situation.