

As you are aware, immigration enforcement is a major priority for the Trump Administration. Work site enforcement and I-9 audits and inquiries by ICE will continue to increase. A new I-9 form was issued. The Company needs to make sure that it is completing the new Form I-9 for every newly hired employee, auditing its I-9 forms, complying with the E-Verify requirements as applicable, and otherwise review and follow the immigration compliance strategies we have previously taught, including on how to respond to SSA and identity theft inquiries. As part of your compliance, you should implement the new I-9 as soon as possible.

On July 17, 2017, USCIS issued a revised Form I-9. **All employers must use the new Form I-9 by September 18, 2017.** The newest version of the Form I-9 is dated 07/17/17 in the bottom left corner, with the expiration date of 08/31/2019 in the top left corner. You can use either the 11/14/2016 or the 07/17/17 Form I-9 through September 17, 2017. On September 18, 2017, however, use only the 07/17/17 Form I-9 and make sure the I-9 is fully complete and section 1 must be completed on the first day an employee works for you.

There were changes made to both the Form I-9 instructions and the Form I-9 itself. Make sure to post the new Form I-9 instructions on the wall where you have your required employment posters. And, have the List A, B and C page available for employees when they complete the I-9 form. Do not ask employees for specific types of documents to complete the I-9 form. Always let the employee choose one document from List A or one document from List B and C.

The changes to the new Form I-9 are minimal. One change is that the old sentence that read employee must complete the Form I-9 “no later than the end of the first day of employment” was changed to read that Section 1 must be completed “no later than the first day of employment.”

Another change is that on the Form I-9 instructions, the DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices was changed to the Immigrant and Employee Rights Section to reflect the new name of the Office of Special Counsel (“OSC OF DOJ”) that was changed on January 18, 2017. This is the government agency that handles discrimination charges if a company is considered overzealous in asking for specific or additional documents, or is discriminatory in how it handles SSN mismatches, or if a company targets or singles out individuals with EAD authorizations or permanent resident cards differently than others.

And, another change is that on the Form I-9, List C on the List of Acceptable Documents, it was revised to add the Form FS-240 Report of Consular Birth Abroad and all the certifications or reports of birth issued by the Department of State were combined into one number on the List of Acceptable Documents. The other List C documents (with the exception of List C) were then renumbered.

Please ensure that the Company implements the new Form I-9 before September 19, 2017. It may also be a good time to conduct an internal I-9 audit and I-9 training to help ensure proper compliance with the immigration, employment verification, and E-Verify

requirements, as applicable. Let us know if you want us to complete any I-9s training with booklets and certificates or do any I-9 audits of I-9 forms etc. Please stay vigilant on your internal I-9 audits and ensure your team is trained on completing I-9 forms, avoiding discrimination, know how to respond to government investigations, and are following protocols on responding to police, DES or other third party inquiries about identity issues. Keep safe in the hot summer and take time now to audit your I-9 forms.

The fines have increased significantly. Companies who previously had one audit are likely on the list for a second audit. Those companies who already experienced a second I-9 audit and violations were noted, are likely to see a third audit so it pays to take the time to ensure your I-9s are in compliance. Please let us know if you have any questions or if there is anything we can do to assist you.



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 and defends claims of sexual harassment, employment discrimination, retaliation, whistleblower, wrongful discharge, and defends against charges by the EEOC or ACRD. She handles matters involving confidentiality and anti-solicitation of customers and OSHA, ICE, E-Verify, DOL, Davis-Bacon, FAR, SCA, OFCCP, EBSA, NLRB, ADA and healthcare, ADA, FMLA, ERISA, government contracts and wage and hour audits and issues. She regularly provides training to companies and assists with investigations. Julie can be reached at 602.322.4046 or jp pace@cavanaghlaw.com