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Revised I-9 Form and Regulations Released

Summary

On December 11, 2008, the United States Citizenship and Immigration Services ("USCIS") released an interim final rule that amends the regulations governing the Employment Eligibility Verification Form commonly referred to as the Form I-9. This rule revises the types of acceptable documents employees may present to their employers for completion of the Form I-9. Employers should start using the revised Form I-9 on February 2, 2009 for all new hires and employees who require re-verification.

Detailed Analysis

All employers are required to verify the identity and employment authorization of each person they hire for employment in the United States. As part of the verification process, employers must complete the Form I-9, maintain the form and make it available for inspection upon request. On the Form I-9, a newly hired employee must attest to being a U.S. citizen or national, a lawful permanent resident ("LPR"), or an alien authorized to work in the United States. The employee must then present to his or her employer specific documentation designated as acceptable for establishing identity and employment authorization. The list of approved documents that employees can present for verification is divided into three sections: List A documents verify identity and employment authorization, List B documents verify identity only, and List C documents verify employment authorization only. The employer must examine the documents, record the document information on the Form I-9, and certify the documents reasonably appear to be genuine and relate to the individual.

The revised Form I-9 incorporates three primary changes:

1. The most significant change to the revised Form I-9 is that all documents presented during the verification process must be unexpired. If a document does not contain an expiration date, such as a Social Security card, it is considered unexpired.
2. Two documents have been added to List A on the List of Acceptable Documents:
 - Foreign passports containing certain machine-readable immigrant visas ("MRIV")
 - Valid passport from the Federated States of Micronesia

("FSM") or the Republic of the Marshall Islands ("RMI") with a valid Form I-94 of Form I-94A.

3. Three documents were removed from List A of the List of Acceptable Documents:

- Form I-688, Temporary Resident Card
- Form I-688A, Employment Authorization Card
- Form I-688B, Employment Authorization Card

USCIS no longer issues these cards, and all that were in circulation have expired.

Employers must use the revised Form I-9 for all new hires and to re-verify any employee with expiring employment authorization beginning February 2, 2009. The previous Form I-9, identifiable by the *(Rev. 06.05.07)N* in the lower right corner of the form, will no longer be valid after this date. Revised Form I-9 is accessible at http://www.uscis.gov/files/form/I-9_IFR_02-02-09.pdf. The interim final rule is available at <http://edocket.access.gpo.gov/2008/E8-29874.htm> and the "Handbook for Employers, Instructions for Completing the Form I-9 (M-274)" will be updated to reflect these changes and will be available on the USCIS website in the near future.

Should you have any questions, please do not hesitate to contact your regular Hall Render attorney or Michael L. Kim, John P. Ryan, or Jennifer H. Richter at Hall Render, Killian, Heath, & Lyman, P.C. at 317/633-4884.

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