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Client Alert: United States Citizenship & Immigration Services Releases Revised Form I-9

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On January 31, 2020, the United States Citizenship & Immigration Services (USCIS), a component of the Department of Homeland Security, released the long-awaited revised Form I-9, Employment Eligibility Verification (Form I-9). The Form I-9 is used to verify the identity and employment authorization of individuals hired for employment in the United States. All employers in the United States are required to implement procedures for the use of the Form I-9 that ensure its proper completion for each individual that is hired for employment in the United States. Employers must maintain Forms I-9 for as long as an individual works for the employer and for the required retention period after the termination of an individual's employment.

The new version of the Form I-9 brings only a minor change to the form itself. Specifically, USCIS revised the Country of Issuance field in Section 1 and the Issuing Authority field in Section 2 to add Eswatini and Macedonia, North, because those countries recently announced name changes. This change is visible only when completing the electronically fillable Form I-9.

On the other hand, the Form I-9's revised instructions include more significant changes. First and perhaps most noteworthy, the USCIS provides clarification regarding who can act as an "authorized representative" on behalf of an employer. The instructions maintain that employers can designate "any person" to complete and sign Section 2 of the Form I-9 on the employer's behalf, but the employer, not the authorized representative, is liable for any violations committed in connection with the Form I-9, "including any violations of the employer sanctions laws committed by" the authorized representative.

The USCIS also now explains the different forms of identification documents presented in Section 2, List B and further instructs that employers who enter information in Section 2, List A should not enter N/A in Lists B and C (and vice versa).

Finally, the revised Form I-9 instructions update the process for requesting paper Forms I-9 and provide an updated Department of Homeland Security Privacy Notice, website addresses and other contact information.

Although the Form I-9 went into effect on January 31, 2020, USCIS is permitting employers to continue using the prior version of the form until April 30, 2020 to allow employers the time to make the necessary updates and adjust their business processes accordingly.

Nevertheless, employers should be aware that failure to utilize and/or properly complete the updated Form I-9 and comply with USCIS record retention requirements may have significant implications, from potentially costly civil penalties to criminal prosecution. Accordingly, employers should dispose of any incomplete, outdated July 17, 2017

Form I-9 print-outs and immediately begin using the updated version for new hires moving forward.