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Employment Law Alert

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New Form I-9 Must Be Used Starting No Later Than May 7, 2013

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Beginning May 7, 2013, all employers are required to use a new Form I-9 that has been published by the U.S. Citizenship and Immigration Services (USCIS). The new Form I-9 can be downloaded from USCIS at www.uscis.gov. Employers may begin using the new Form I-9 immediately.

The revised Form I-9 includes several changes which USCIS designed to minimize errors in completing the form. The instructions have been revised, and the layout of the form has been revised to expand it from one to two pages. Additional data fields have also been added, including the employee's telephone number, e-mail address, and foreign passport information (if applicable).

Form I-9 may seem simple, but it is complicated enough to require a 69-page how-to manual, the M-274 Handbook for Employers. The Handbook for Employers has not yet been updated, but USCIS is working on updates. In the meantime, employers should rely on the instructions that accompany the new Form I-9.

There were a record number of audits and enforcement actions by the U.S. Immigration and Customs Enforcement (ICE) for non-compliant Form I-9 programs in 2012. Failure to properly maintain Form I-9s can subject an employer to civil monetary penalties, and in some cases, criminal penalties. ICE conducted more than 300 audits in fiscal year 2012, and the increased audit activity resulted in fines totaling \$13 million. This information, coupled with the introduction of the new Form I-9, presents employers a perfect opportunity to initiate a self-audit of Form I-9 compliance. Employers should have properly completed Form I-9s on file for all employees who were hired after November 6, 1986. The properly completed Form I-9s are required to be maintained for as long as an individual works for the employer and for the required period of retention after the termination of the individual's employment – either three years after the date of hire or one year after the date employment ends, whichever is later.

Mistakes discovered in the Form I-9s in an employer's file may be corrected, but care must be taken to properly handle and document the corrections in order to protect the employer's interest and establish a good faith defense should the corrections ever be reviewed by ICE. The Handbook for Employers and the USCIS website are good resources, but if questions arise about how to correct errors, we encourage you to contact an experienced employment or immigration attorney.

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