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I-9 FORM

CONTRACTOR COMPLIANCE LANGUAGE

CONTRACTOR I-9 COMPLIANCE AGREEMENT

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# GUIDELINES FOR I-9 COMPLIANCE

## I. Introduction

A Form I-9 must be completed and retained for every employee hired after November 6, 1986. The I-9 requirement was created by the Immigration Reform and Control Act of 1986 ("IRCA"). IRCA imposes stiff civil money penalties upon employers who fail to comply with the law's requirements. This memorandum will provide specific instructions for completing I-9 forms and other compliance aspects.

## II. The I-9 Form

The I-9 form consists of two basic parts. Section 1 contains basic information about the employee, including information about the employee's date of birth, Social Security number, and citizenship/immigration status. Section 2 of the form contains several attestations by the employer regarding the documents presented by the employee and the employee's right to work in this country. The Bureau of Immigration and Customs Enforcement ("ICE") requires that Section 1 of the I-9 form be completed before work commences. Section 2 is to be completed within 72 hours of work commencing. The law also allows for grace periods to replace or obtain missing documents. As a practical matter, these rules leave much room for error. Accordingly, the better policy is as follows:

- The entire I-9 Form must be completed before a new hire commences work.
- New hires who do not have the required documents with them should be sent home to get the documents and should not be allowed to work until satisfactory documents are produced and the I-9 form is complete.

While this policy may occasionally cause inconvenience, it will also ensure that no forms are completed late. ICE fines for late completion are typically set at $300 or $400 per form.

### A. Section 1 of I-9 Form

Section 1 of the I-9 form elicits the employee's name, address, date of birth, Social Security number, and citizenship/immigration status. Section 1 requires that the employee attest to immigration status and validity of documents presented to establish identity and employment eligibility. The employee must sign and date the I-9 Form. The employee must also attest to a status. These are the two most common errors in Section 1 of the I-9 form. If the employee fails to sign or date the form or fails to attest to a status, the employer will be fined by ICE. Therefore, it is vital that the employer ensure that the employee has properly completed Section 1 of the I-9 form.

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Be certain that the following fields are completed in Section 1:

- Name and address
- Date of Birth
- Maiden Name (if applicable, and especially if new hire is presenting documents with that name);
- Social Security number
- Citizenship/immigration status box, including alien number and/or expiration date, if applicable
- Employee's signature and date

If the employee needs assistance in completing the form or needs a translator, someone may assist the employee, but the employee must sign (or mark) the form in the appropriate section. The person assisting the employee must fill out the block marked "Preparer/Translator Certification." If you add or revise anything in Section 1 of the form, complete the Preparer/Translator Certification. ICE wants to see forms that are properly completed, so do not be afraid to insert the current date even if you are revising a form that was completed previously.

B. Section 2 of I-9 Form

Once the employer is satisfied that Section 1 of the form is complete, the employer should give the new hire the choice of what documents to present. New employees must present documents proving identity and employment eligibility. A list of documents which may be accepted to satisfy this requirement is attached to this memorandum. It is often a good idea to post the list of acceptable documents where I-9 forms will be completed. You can also post it where applications are completed or submitted. The list can also be included in offer letters or correspondence with prospective new hires. It is also a good idea to post a notice where applicants complete or submit employment applications advising applicants that: "We comply with U.S. immigration laws and do not employ persons unauthorized to work. If hired, you will be required to produce identity and work authorization documentation."

There are three types of documents. List A sets forth documents that prove identity and employment eligibility. List B sets forth only identity documents. List C sets forth only employment authorization documents. NOTE: the new hire need only present enough documents to prove identity and employment eligibility. DO NOT ask for more documents if the documents presented establish identity and work authorization. If documentation under List A is used, do not ask for any additional documentation. If the new hire provides documentation under List B and C, ensure that there is only one document examined from each list. Do not accept two documents from List B or two from List C. Only accept the listed documents. Do not specify which of the acceptable documents you require of an employee. The employee must be allowed to select from the list.

The employer completes Section 2 of the I-9 Form. You must examine the documents presented by the employee to establish both identity and employment eligibility. If the documents reasonably appear to be genuine, you should record the document number and expiration date (as required). If you have any doubts about the validity of any document presented by a new hire, please contact legal counsel or

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internal resources. Do not contact DHS or ICE. You should not accept an expired identity document (e.g., expired drivers license) or work authorization.

As the employer's agent, you will be signing a certification stating that the documents: (1) reasonably appear to be genuine; (2) relate to the individual; and (3) authorize the individual to work. The certification also contains a blank for insertion of the actual date work commenced. Please ensure that the date of hire information is inserted, as this is one of the most common errors in Section 2. Please also ensure that Section 2 is signed and dated by the person who examined the documents presented by the new hire. Be alert for the fact that the new hire may have already signed Section 2 inadvertently. If so, simply cross out the incorrect signature and date, and substitute your signature and date as appropriate.

C. Special Situations

An employee unable to produce an employment eligibility document may present a receipt from an application for a replacement document. New hires who have lost their Social Security card or birth certificate may apply for a replacement and present the receipt from the replacement application. In such a case, the receipt authorizes employment for 90 calendar days from the date it is presented. You should not, however, accept a receipt that is more than 90 days old. Note that receipts cannot be accepted for employees who will work three days or less. The employee must still complete Section 1 of the form prior to commencement of work. You should record the type of receipt, the receipt or document number, and the end of the 90 day "grace" period in Section 2. If an employee present a receipt, you should keep track of the expiration of the grace period so you remember to ask for additional documents when it ends. At the end of the 90 day grace period, the employee must present some valid work authorization document in order to continue employment. You should not specify what document the employee presents at any time in the I-9 process, including at the end of a 90 day grace period.

Before the expiration of the 90 day grace period, you will complete Section 3 of the form in connection with reverification of the individual's right to keep working. Record the document type, number, and expiration date in Section 3 of the form, and sign and date Section 3.

Reverification, and completion of Section 3, also occurs whenever an employee's employment authorization document expires. Some employees may have a limited right to work, which is reflected by means of an expiration date on their work authorization dates. To prevent the continuing employment of someone who lacks the right to work, the law requires the employer to reverify the individual's continuing employment eligibility. You should follow the same process followed for Section 2, i.e., ask the employee to produce a new employment eligibility document from the list. If the document reasonably appears to be genuine, record the document type, document number, and expiration date (if any) in Section 3, and sign and date the form. Note that reverification only applies to work authorization documents and not to List B identity documents. Note also that you do NOT reverify eligibility of persons who present a U.S. passport or Alien Registration Card (Form I-551) because although their card may expire, their right to work does not.

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Some aliens receive Social Security cards with a legend restricting their employability. These cards will have the following legend: "Valid for work only with [INS/DHS] authorization." In this case, you can accept the card as a valid List C document, but only if the employee presents some DHS document authorizing employment. Note that the DHS document need not be on the I-9 list and could take the form of a letter from DHS telling the employee that he or she is employment authorized. You should record the Social Security number on the form and also record the expiration date from the DHS document, if any. If there is an expiration date, you will need to reverify the employee's employment eligibility before it expires.

You may also use Section 3 to avoid completion of a new I-9 form in the event that an employee is re-hired. You should show the form to the employee and ask if everything remains the same. If any information has changed, have the employee complete a new form. Otherwise, simply record the re-hire date in Section 3 and sign and date the form. This rule only applies if the individual is re-hired within three years of the completion of the original I-9 form.

In the event that Section 3 is already completed, and you need to record re-hire or reverification information, simply complete Section 3 of a new form and attach it to the prior form. It is a good idea to write "Reverification Form Only" across the top of the new form.

D. Photocopies

The regulations allow an employer to make photocopies of documents presented by employees in connection with the I-9 process. The regulations do not presently contain any specific retention requirement for photocopies. Therefore, photocopies can be kept or thrown out at any time. For most employers, keeping photocopies is a good idea because it helps in correcting forms during periodic self-audits. If you suspect you may be audited or if you suspect that your workers may be illegal, you should do a thorough self-audit to ensure your I-9 forms are completed correctly and then discard photocopies. Please also note that to avoid potential claims of discrimination, you should not make photocopies selectively; if you make photocopies of documents, you should do so for all new hires.

E. Retention of I-9 Forms

I-9 forms must be retained for three years from the date of hire AND for one year from the date employment ends. This means that you must have an I-9 form for all current employees hired after November 6, 1986 when the law was enacted. You do not need a form for employees hired prior to that date if they have been continuously employed. Please note that both parts of the test must be met before you may lawfully discard an I-9 form. As part of the periodic self-audit process, you should discard I-9 forms that you are no longer required to keep. Before discarding the form, confirm that you have met the retention test.

It is a good idea to maintain a "tickler" file for I-9 forms indicating that an employee has a limited right to work. This makes it easier to ensure that timely reverification of employment eligibility occurs. Many employers accomplish this by keeping current employee forms alphabetically, but keeping "tickler" forms separately.

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These forms are then filed chronologically according to the date the individual's employment authorization document expires.

## III. Self-Audits

The first step in a self-audit is to confirm that you have all the I-9 forms you should. Generate a list of all current employees and verify that you have a form for each. You should also generate a list of all persons hired during the three year period prior to the self-audit whose employment terminated during the year preceding the self-audit; you should have a form for each. If you are missing forms from current employees, obtain them as soon as possible. If you are missing forms for terminated employees, consider contacting them to obtain a form. It is a good practice to review the I-9 form during an exit interview or before an employee is terminated, as this helps ensure that you have the forms you should and that they are properly completed before the individual becomes unavailable.

During periodic self-audits, examine I-9 forms to ensure they are properly completed. Insert any missing information omitted previously. If necessary, contact the employee to obtain missing information or to re-examine a document presented by the employee. If you have photocopies of documents employees presented, use them to obtain the missing information. If the employee neglected to sign or date Section 1, ask the employee to do so. Use correct dates to the extent possible. If you add or revise information in Section 1 of the form, complete the Preparer/Translator certification. Consider adding "self-audit" next to any form corrections.

## GUIDELINES FOR CONDUCTING AN I-9 AUDIT

1. Generate a list of employees hired since November 6, 1986. It will be easier later if the list matches the order in which your I-9 forms are filed. The list should show last name, first name, date of hire, date of termination, and some distinguishing fact, e.g., SSN or DOB, in case two employees have the same name. Ideally, individuals with more than one hire date will appear on the list once for each date of hire, and each prior hire would also show a termination date, so you can determine which forms you don't need to keep.

2. Calculate the retention dates for persons on the list by comparing date of hire, date of termination, and the date of your self-audit. The easiest way to do this is to write down the date that is one calendar year prior to the audit date. That becomes the target termination date. Then subtract two years to get the target hire date. (Forms can be discarded for persons hired before the target hire date whose employment ended before the target termination date.) Highlight or cross off the names of the employees on the list whose I-9 forms need no longer be retained.

3. Pull forms for highlighted names from the I-9 file. Do not throw them away until someone else has confirmed that you need no longer retain the form by confirming that the two retention tests (three years from date of hire and one year from date of termination) have been met. In addition, you may find information on a form that need not be kept which may be useful in completing a form which was completed later (perhaps because of re-hire) for the same person.

4. Begin checking I-9 forms, working in the same order as the names on the list. As each form is reviewed, put a check mark on the list next to the appropriate name. Set aside forms for whom there is no name on the list as you go through it, as these are probably forms for people whose names changed.

5. Use "stick-on" notes to show problems with the forms. Be aware that forms may have multiple problems.

6. Begin correcting forms that have been reviewed. If you have retained photocopies of documents, many form deficiencies may be cured. In addition, information from employee personnel files may be helpful. If anything is added to Section 1 of the form, remember to complete the Preparer/Translator portion of the form. If using the new form, use the audit date as the date to insert in the Preparer/Translator portion of the form, since it is better to have a "late completion" problem than missing information on the form. If information is added to the form, try to use the same color ink. Do not use "WhiteOut" to cover up incorrect information or for any other purpose; instead, simply cross out the incorrect information. If you are adding information to Section 2 of the form, it is optional to include the words "Self-Audit" and the date of the audit.

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7. If necessary, ask employees to sign or date Section 1 of the form or present correct documents.

8. As forms are corrected, cross out deficiencies on the “stick-on” notes. When all items are crossed out, remove the “stick-on” note. When the form is correct, re-file it. If you need to know more about your overall compliance level, annotate or highlight the employee list to show forms which have been corrected. This may help identify recurring problems for purposes of future staff training.

9. There may be some forms which simply cannot be cured. For example, you may have terminated employees from whom you accepted invalid documents, but the form cannot yet be discarded. Annotate the list to show a “major” problem, remove the “stick-on” note, and re-file the form. Note that you may wish to create a “tickler” file or some other system for reminding you to discard defective forms when you no longer need to retain them.

10. When you have reviewed all forms and corrected all deficiencies, review the annotated list to see what forms you are missing. See if any of the forms you set aside for lack of a name on the list should be filed under a different name. Consider checking the personnel file to see if a name change has occurred. Any current employees for whom no form can be found should be called in immediately to complete a form.

11. If a significant number of forms are missing or defective for terminated employees, consider keeping separate I-9 files for current and terminated employees. This may be helpful during the process of discarding forms periodically, and there is less likelihood that ICE will ask to see forms for terminated employees if the forms for current employees are in good shape.

12. Add up the number of missing forms and major problems to calculate your exposure. Missing forms are generally penalized at around $800 per form for the record-keeping violation plus around $1500 per form for a knowing employment violation. (ICE assumes that persons without forms are illegal.) Major problems usually result in fines of between $600 and $800 per form. If your exposure is significant, consider a training seminar for staff completing I-9 forms.

13. Discard forms that you are certain you need not keep.

14. Plan your next I-9 audit.

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## CHECKLIST OF PREVENTIVE I-9 MEASURES

1. Do not let employees begin working until the I-9 form is complete. This will reduce the risk of late completion or incomplete forms. It is also far easier from your perspective if you simply tell the employee to come back the next day with proper documents because you will not have to create a three-day "call-up" or "tickler" file.

2. Make certain that the staff performing verification are properly trained. Ensure that they get appropriate updates.

3. Conduct periodic self-audits to monitor your own compliance.

4. Keep I-9 forms in a separate file -- not in personnel folders.

5. Make photocopies of documents so you have something to work with if you have to add information to the form later.

6. Purge I-9 forms during periodic self-audits. Follow the retention rule: Three years from Date of Hire **and** one year from Date of Termination. When you meet both tests, throw out the form.

7. Do not seek advice from ICE or DHS. If you have questions, call an expert.

8. Prepare your staff for informal/surprise visits from government agents. Have a "gatekeeper" policy and communicate it.

9. Beware of document abuse discrimination. Do not ask employees for specific documents or more documents than you need to complete Section 2 properly.

10. Review the I-9 form before an employee leaves your payroll. This may be your last chance to get a signature or other necessary information.

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## WHAT TO DO WHEN THE GOVERNMENT ARRIVES

The following are likely scenarios in which a government official may approach an employer. In each scenario, an employer has options ranging from total acquiescence to insistence upon all legal rights. Employers that say "no" to a government agent run the risk that the agent will escalate the scope or severity of the audit. On the other hand, the government may have trouble enforcing a penalty against an employer after trampling its rights. We submit that it is prudent for an employer to consider its I-9 compliance carefully prior to deciding the posture to take with the agency.

**1. An Agency Official/Investigator Appears With A Notice Of Inspection And Wants To Conduct An On-Site Inspection Immediately. I-9 Forms Are Kept On-Site.**

The law states that an employer shall be provided with at least three days notice prior to an inspection of I-9 forms. At the time of inspection, the I-9 forms must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. Therefore, when presented with a Notice of Inspection, the employer may insist on the three days notice. Please note that, although no subpoena or warrant is necessary to inspect I-9 forms, an employer can insist upon a subpoena before granting ICE access to other personal information.

**2. Official Appears With A Notice Of Inspection And Wants To Conduct An On-Site Inspection. I-9 Forms Are Kept A Different Location.**

The law states that if I-9 forms are kept at a location other than the location where the request for production was made, the employer must inform the official of the location where the forms are kept and make arrangements for the inspection. We recommend that the employer make this contact in writing for two reasons. First, a letter to ICE serves as proof that the employer acted in good faith. Second, as a practical matter, this means that the inspection may never occur, since the ICE office nearest to where the forms are kept may have its own enforcement agenda.

**3. Official Appears With Notice Of Inspection And Wants To Make Copies Of I-9 Forms And/Or Take Forms Away For Copying Or Review.**

As discussed above, employers may insist on three days notice before allowing an inspection. Regarding copying of I-9 forms, the law states that I-9 forms must be made available in their original form (or on microfilm or microfiche) at the location where the request for production was made. The law also states that inspections may be performed at an ICE office. We take the position that this language does not mandate that employers furnish copies of I-9 forms or allow the forms to be copied by ICE. Instead, the employer's willingness to make original I-9 forms available for inspection at the employer's place of business and in accord with the ICE notice of inspection is all

that is required. To date, there is no clear statement to the contrary. Officers will almost always want to have original or copies of I-9 forms so that they can scrutinize them in a leisurely manner back at the ICE office. We recommend that employers not be bullied into providing copies or allowing the forms to be copied and returned later. The more time the officer has to review the forms, the more violations the officer is likely to find, if so inclined.

When an employer resists the ICE request to take original or copied I-9s off-site, ICE often asserts that the I-9 forms are government property. This is nonsense. Nothing in the law even remotely suggests that I-9 forms belong to the government. In fact, the ICE regulations specifically state that the employer must retain the forms.

Sometimes, the ICE agent states that copies of all I-9 forms are required to preserve the evidence in case a violation is found. This puts the cart before the horse! The employer's best response to this assertion is to offer to provide a copy of any form ICE claims is a violation. The lets the employer keep track of which forms are problematic, and the employer can correct any ICE misunderstandings or incorrect application/interpretation of the rules.

**4. Official Appears With Notice Of Inspection And Subpoena.**

As stated above, no subpoena or warrant is required to inspect I-9 forms, but an employer can insist upon a subpoena before granting ICE access to other personal information. Assuming the officer has given three days notice (ICE has recognized that the use of subpoenas does not obviate the three-day notice rule), the employer should allow inspection of I-9 forms. ICE will usually subpoena I-9 forms and "any and all books, lists, payroll records, and personnel records for each employee hired after November 6, 1986." The standard ICE subpoena is very broad, and the employer can usually negotiate what must be produced. Also, since ICE subpoenas are not self-enforcing, there is no immediate legal liability for failure to produce subpoenaed items (other than the I-9 forms). Of course, failure to comply with the ICE subpoena may have adverse practical consequences, and unless the subpoena is unreasonably burdensome, ICE will usually be able to get a federal court order requiring the employer to comply with the subpoena.

**5. Official Appears With A Search Warrant.**

A search warrant may be used to compel production of I-9 forms or other documents and to search for a person. Officials are required to establish probable cause to a judge or magistrate in order to obtain the warrant. ICE takes the position that officials with a warrant to search I-9 forms are not required to give the employer three days advance notice. Although subpoenas are not self-enforcing, warrants are. Do not resist a search warrant. Retain a copy of the warrant and monitor the search, but stay out of the way. There are procedures for challenging a warrant, but all involve an after-the-fact challenge. Generally, access must be granted to the extent authorized by the warrant.

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## 6. Official Appears With No Notice Of Inspection, Subpoena, Or Warrant And Wants To Inspect I-9 Forms.

Employer may insist on three days notice prior to producing I-9 forms for an on-site inspection. Often, the ICE agent will try to persuade the employer to waive advance notice. “I was just in the area . . .” “This won’t take long . . .” “You don’t want me to have to come back...” “I just want to report to my boss that you are clean . . .” “You do want to comply with the law, don’t you?” These are all common lines used to urge waiver. The best course is to insist politely upon advance written notice.

## 7. Official Appears With No Warrant And Wants To Look For An Employee Believed To Be An Illegal Alien.

As a general rule, an officer may not make a warrantless inspection of a business” premises. The public areas of business, i.e., those areas for which the employer has no reasonable expectation of privacy, can be searched without a warrant.

## 8. Official Conducting I-9 Inspection Asks To See A Particular Employee.

During the course of conducting an I-9 inspection, an officer may begin to suspect that a particular employee is an illegal alien and may wish to interrogate that employee. ICE officials can ask to speak with employees during an I-9 inspection, but the employer may refuse the request. ICE has stated that officials cannot use access to the workplace for an I-9 inspection as the sole basis for interrogating employees about their immigration status.

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**CHECKLIST WHEN GOVERNMENT AGENT VISITS**

1. Insist on 3 days notice before allowing the inspection.
2. Notify the home office or supervisory personnel as soon as possible.
3. **Do Not** consent to a search.
4. **Do Not** destroy the I-9s.
5. Determine whether ICE or the DOL will be conducting the inspection.
6. Evaluate the status of the Company's compliance as soon as possible.
7. Evaluate the Company's desire and ability to resist any subpoena as soon as possible.
8. Clean up the I-9s (**without** back dating them) and begin to evaluate other documents to be presented at inspection.
9. Designate one individual responsible for liaison with the auditor.
10. Determine whether auditor will remove I-9 forms from Company premises. **(Not recommended.)**
11. Determine whether photocopies of forms and/or supporting documents will be made available to auditor.
12. Select location for the on-site audit, preferably a conference or meeting room where there will be no interruptions and limited access to employees.
13. Take careful note of any alleged violations mentioned by the auditor.
14. Ask auditor for assistance in understanding any alleged problems.

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# FREQUENTLY ASKED QUESTIONS ABOUT RECENT DEVELOPMENTS IN IMMIGRATION LAW

## 1. What has changed with regard to enforcement of immigration laws?

We have seen a sudden increase in **enforcement efforts** in the last couple of weeks. In the past week, several clients reported Notices of Inspection. The Department of Homeland Security (DHS) also conducted a highly-publicized nationwide raid on IFCO's US operations. As part of its public relations campaign, DHS announced that it would be more aggressive about enforcement, using the harboring, smuggling, and transportation criminal code provisions to go after companies knowingly employing illegal aliens. Seven managers were arrested as part of the IFCO raids. While the alleged conduct in the IFCO situation was egregious -- shredding W-2s to deliberately pay illegal workers off the payroll -- the investigation and publicity herald a renewed enforcement effort by DHS.

## 2. Has the law changed?

**No**, the law remains the same today. Pending proposals in Congress would radically change the burdens on employers and the penalties for noncompliance. For example, the enforcement provisions in the bill that passed the House last December would require every employer to re-verify all current workers and verify all new hires using the Social Security Administration and DHS online systems that in the past have been voluntary or pilot systems. Penalties for knowing employment violations would be much higher.

## 3. What are the penalties for noncompliance?

Under the present law, failure to complete the I-9 form properly can result in a penalty of **$110 to $1100 per form**. A first violation of the knowing employment prohibition can result in a penalty of $275 to $2200. Second violation penalties range from $2200 to $5500. Third violation penalties range from $3300 to $11,000, and at this stage the employer is at risk for criminal pattern or practice liability.

## 4. Is there a possibility of arrest and indictment for criminal conduct?

**Yes,** but this is highly unlikely for most employers who are trying to comply in good faith. Employers that turn a blind eye to illegal workers or that completely ignore I-9 compliance are more likely to be accused of pattern or practice violations, or worse, smuggling or harboring violations.

## 5. Are certain industries more likely to be targets of enforcement?

Yes, the government has always believed that employers in the **construction, agriculture, hospitality, garment, and food processing** industries employ higher percentages of foreign and illegal workers. Renewed enforcement efforts will most likely focus first on those industries.

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**6. Will employers be liable for contractors and staffing company employees?**

As a general rule, employers should not be liable for contractor compliance. Beware of situations where the employer may be the "statutory" or "legal" employer despite efforts to make workers "employees" of another entity. The Immigration Reform and Control Act essentially adopts the common law "right of control" test in determining whether a worker is an employee or a contract worker. Employers that knowingly steer illegal aliens to contractors because they can't be hired directly, face knowing employment liability and possible criminal sanction. (Note that this was the Wal-Mart scenario.)

**7. What should employers do now?**

Prudent employers will undertake a review of their hiring and enrollment procedures to make certain they are getting I-9 forms done correctly and timely. It would also be wise to review the status of I-9 compliance and conduct self-audits to ensure that the forms are properly completed.

**8. How can F&P help employers?**

First, we can inform employers of the need to confirm their compliance status. Second, we can answer questions about corrections to forms, re-verification obligations, documents that can be accepted, and procedures for putting effective compliance systems in place. Third, we can perform random or full audits of I-9 forms. Normally, a review of 50 randomly chosen forms will cost about $500. This includes review of copies, returning marked-up copies to the client, and a brief telephone consultation to explain problems, answer questions, and suggest solutions. Finally, we can help clients prepare for government inspections.

**Numerous regulations, interpretations, and other authorities must be evaluated in applying these principles. This document is intended for general information purposes only. It is not a complete or all-inclusive explanation, and it should not be construed as legal advice on any specific facts or circumstances. You are urged to consult legal counsel concerning your situation and any specific legal questions you might have. This document was provided to you by Fisher & Phillips LLP, 404-231-1400, www.laborlawyers.com. For additional information, please contact your Fisher & Phillips LLP attorney.**

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# Immigration Overview

General: There are two basic kinds of visas: temporary (or nonimmigrant) and permanent (or immigrant) visas.

Temporary There are many different kinds of temporary visa categories, creating a virtual alphabet soup. There are visa categories for tourists, students, crewmen, specialty workers, foreign journalists, fiancés, artists, entertainers, athletes, trainees, support staff, religious workers, and NATO delegates. Many temporary visa categories authorize employment, but some do not. In most cases, if a temporary visa authorizes employment in the U.S., such employment is employer- or job-specific. Because the purpose(s) for temporary visas are so varied, their terms and criteria vary accordingly. Thus, there is no general rule about visa validity or the period of authorized stay a particular visa status will afford.

Permanent: Immigrant visas confer an indefinite right to live and work in the U.S. There are two major means of acquiring permanent residence, which is popularly (although incorrectly) known as “green card” status. The first is through a family relationship to someone who is already a permanent resident or a U.S. citizen. The second major means of obtaining permanent residence is through employment-based sponsorship. It is also possible to acquire permanent residence after being admitted to the U.S. as a refugee or asylee, and past amnesty programs have resulted in millions of illegal aliens become legal permanent residents. In addition, periodic “diversity” visa lotteries award permanent residence to aliens chosen at random in the lottery process.

Quotas: There are “per country” and “per category” limits on the number of aliens granted permanent residence each fiscal year. Because employment-based sponsorship is generally limited to an individual, while family-based immigration involves a larger group of people, quota backlogs tend to affect family-based permanent residence to a larger extent than employment-based permanent residence. For aliens from countries with high levels of immigration historically, “per country” quotas can create substantial backlogs also. Quotas also apply to certain nonimmigrant visa categories, e.g., H-1, H-2, and certain specialized temporary visas.

Visas: Essentially a travel authorization, visas are a somewhat archaic notion today. Nonetheless, a visa is necessary in order to approach the U.S. border and seek admission to the U.S. for a defined or specified purpose. Prior to 1965, an immigrant visa was almost always necessary in order to enter the U.S. to establish permanent residence, but today immigrant visas have largely been eliminated by the adjustment of status procedure, which allows conversion to permanent residence for aliens already residing in the United States. Visa validity

is determined by reciprocity rules, i.e., based upon the period granted to U.S. citizens who visit the alien's native country for analogous purposes. For example, if Country X admits U.S. citizens for temporary professional employment for three years, then citizens of Country X seeking admission to the U.S. for temporary professional purposes will be granted visas that expire in three years. Visa reciprocity rules also govern how many times a visa stamp may be used to enter the U.S.; although most visas permit multiple entries, some countries restrict the number of entries U.S. citizens can make, and U.S. visas are similarly restricted for aliens from those countries.

Stay in U.S.: Visa validity differs in some cases from the period that the alien will be granted for each visit. Of course, this applies only to temporary visas, since permanent residence confers an unlimited right to reside in the United States. Authorized stay and visa validity may differ where, for example, the alien's native country admits U.S. citizens for a period longer than U.S. law permits for an analogous purpose. Some countries grant tourist visas for a ten year period, and where this is so, the U.S. does also, but U.S. law generally limits tourists to an authorized stay of only six months. E visa and F visa aliens are also often affected by the disparity between visa validity and authorized stay. The period of authorized stay is reflected on the Arrival/Departure (I-94) card the alien receives upon entry to the United States.

Procedure: Visas are granted overseas at U.S. embassies and consulates. Because of visa reciprocity rules, the procedures for obtaining a visa (and the fees charged to obtain the visa stamp in the alien's passport) often vary at different U.S. embassies and consulates. The alien must generally submit a visa application on Form DS-156, along with supporting documentation; and the alien will always be interviewed by a consular officer. The consular officer's decision not to issue a visa is generally not subject to further review. Because of historical patterns of visa abuse, obtaining a visa may be more difficult in some countries than in others. Moreover, the fact that an alien has already been granted a change to a new visa status in the U.S. is no guarantee that the consular officer will grant the alien the desired visa stamp. As a general matter, the principal alien must show eligibility for the desired visa status, and dependents must demonstrate their appropriate relationship to the principal alien. Note that for aliens from certain countries who seek admission for tourism or brief business visits, the requirement of a valid visa stamp in the passport may be waived. This Visa Waiver Program applies to countries with established histories of temporary immigration to the United States. Canadian citizens are always exempt from a visa requirement, but must maintain a lawful status in the United States.

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## SUMMARY OF COMMON TEMPORARY VISA CATEGORIES

**B-1/B-2** The B-1 visa is used by business visitors who enter the U.S. on an assignment from a foreign employer. The B-2 visa is a tourist visa which permits entry to the U.S. as a tourist or visitor for pleasure. The Visa Waiver Program permits aliens from certain countries to travel to the U.S. for B-1 or B-2 visits without first having to obtain a visa stamp at a U.S. consulate or embassy. Authorized stay is normally limited to the duration of the visit but no more than six months.

**E-1/E-2** The E-1 (Treaty Trader) and the E-2 (Treaty Investor) visas permit transfer of managers, executives, and key personnel who are coming to the U.S. to further the business interests of a foreign entity. E visas permit authorized stay of two years each time the alien arrives in the U.S. Spouses of E visa aliens may apply for a work permit.

**E-3** E-3 visa status allows Australian citizens who qualify as Specialty Occupation Professionals to enter the U.S. in that capacity. Initially granted for two years, E-3 visa stay can be renewed in two-year increments. Spouses may apply for a work permit.

**F-1/M-1** The F-1 visa category is for foreign students in academic degree programs. The M-1 visa is for students in vocational programs. Employment authorization for students is limited to special circumstances, but often allows for a period of practical training upon completion of the degree or vocational program.

**H-1B** The H-1B visa category is for "Specialty Occupations" or professionals in jobs that require attainment of at least a baccalaureate degree in a specialized field related to the job. H-1 status is normally granted in three year increments up to a cumulative maximum of six years of H-1 employment.

**H-2** The H-2B visa category is for Temporary Workers who will fill truly temporary positions for which U.S. workers are unavailable. This visa requires certification from DOL that the job is temporary (i.e., less than one year and due to seasonal, intermittent, or unanticipated need) and that there are no U.S. workers available to fill the job. Status will be limited to less than one year and the alien cannot be sponsored for permanent residence on the basis of a temporary job.

**J-1** The J-1 visa category is for Exchange Visitors, including visiting scholars and lecturers, research specialists, practical trainees, au pairs, Summer camp counselors, and distinguished visitors. The period of authorized stay varies depending upon the category. Practical trainees are limited to 18 months. Because this visa category contemplates "exchanges," many aliens who enter in J-1 status are subject to a two-year foreign residence requirement.

**K** The K visa is for fiancés fiancées of U.S. citizens who can demonstrate a preexisting relationship and intent to wed within 90 days after entry. K status can also be granted to a spouse of a U.S. citizen who is awaiting consular processing for permanent residence abroad. The K visa alien will be sponsored for permanent residence soon after the marriage or as part of the arrival process.

**L-1** The L-1 visa category is for two kinds of Intracompany Transferees: L-1A visas for intracompany managers and executives, and L-1B visas for individuals with specialized knowledge or skill. L-1A status is valid for a maximum of seven years and can result in a streamlined permanent residence case that bypasses labor certification. L-1B status if valid for a maximum of five years.

**O-1** The O-1 visa category is for Aliens of Extraordinary Ability in the arts, sciences, education, or business. Aliens in O status are admitted for the duration of their employer's need but for no more than three years.

**P-1** The P visa category is used by artists, entertainers, and athletes, as well as their support staff. Generally, P visa status is granted in one-year increments, but can be renewed at least once.

**Q-1** The Q-1 status is similar to the J-1 program but is intended for culturally unique exchange visitors. Sometimes called the "Disney" visa because it is used to staff the country exhibits at EPCOT, the Q-1 authorizes admission to perform culturally unique activities for a period of up to 15 months.

**TN** The Treaty NAFTA (or TN) visa status permits Canadian and Mexican citizens to enter the U.S. to work in defined occupations. The list of defined occupations was drawn up by U.S. and Canadian immigration officials and generally reflects occupations that traditionally qualified for H-1B status under U.S. immigration law. TN status is granted in one-year increments and can be renewed at the border or by petition.

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# LABOR ALERT

## Homeland Security Steps Up Interior Enforcement And Threatens Criminal Sanctions: *A Special Alert For Employers In Construction, Agriculture, Hospitality, Food Processing, and Textiles*

Beginning about six weeks ago, the Department of Homeland Security (DHS) and its Bureau of Immigration and Customs Enforcement (ICE) suddenly focused upon interior enforcement of our immigration laws. This has resulted in highly publicized raids on employers, I-9 inspections, detention of deportable aliens, and lots of media coverage. Employers in some industries are more at risk for government investigation and sanctions than others simply because of the perception that those industries have historically employed aliens in relatively low-wage positions in our economy. These industries include construction, agriculture, hospitality, food processing, and textiles. Employers in these industries need to take immediate steps to reduce the risk of enforcement action.

Most alarming is DHS's stated intent of using criminal sanctions to stop "systemic violators" of our immigration laws. In two major raids in the last four weeks, DHS and ICE have arrested managers and accused them of harboring illegal aliens by virtue of continuing their employment. In the Fischer Homes case last week, the Company's job site superintendents were arrested apparently because they did not forbid a contractor from allowing its employees to work on the Company's job sites after an ICE agent told the superintendents that the workers were illegal. DHS and ICE assert that allowing a contractor's illegal workers to continue working constitutes harboring of illegal aliens. The penalty is 10 years in prison and/or $250,000 in fines per alien.

Separately, DHS has indicated that it will prosecute employers that ignore the Social Security Administration (SSA) mismatch letter on the theory that workers who show up on the mismatch list year after year must be illegal workers. Indeed, in the wake of the IFCO raids a month ago, DHS Secretary Michael Chertoff specifically stated that one piece of evidence leading to the arrest of 7 IFCO managers was the fact that the company had ignored the SSA mismatch letter for over 10 years and that over 50 percent of IFCO's workers showed up on the mismatch list.

Employers can take steps to avoid or reduce the risk of enforcement action. First, implement or re-issue policies confirming your compliance with U.S. immigration laws. This notice can be posted on every job site and where applicants apply for work. Second, require contractors and subcontractors to certify compliance with immigration laws. Third, now is the time to make certain your I-9 forms are properly completed. Consider having an outside expert or consultant review your forms and follow their recommendations. Fourth, establish or implement a policy regarding visitors to your facilities. This policy should require that all visitors check in and that government visitors are referred to HR or Legal Counsel before being allowed access to property or employees. Fifth, consider using the SSA online verification system going forward. It's free and it will reduce the number of people on the SSA mismatch letter in the future. Sixth, for employers with substantial numbers of workers on the mismatch letter year after year, send those workers a notice that they need to try to resolve their problem at the local SSA office because you don't know what action you might have to take if they appear on the mismatch list again. Finally, if you believe your I-9 compliance is very good and you can tolerate the possible loss of falsely documented workers, consider asking ICE to come review your I-9 forms. This step should only be taken after consultation with competent counsel regarding your I-9 compliance. Naturally, there is a chance that ICE will accept your offer, but there is also a chance they will politely decline on the theory that you can't possibly be a systemic violator if you invite them to come audit you.

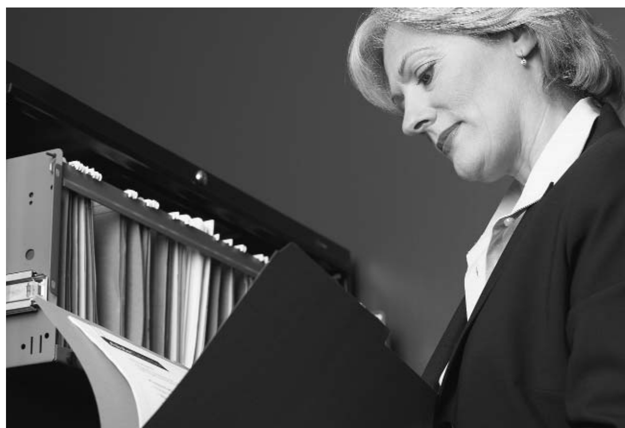
*The material in this Labor Alert is provided as general information only, not as legal advice for any specific situation. If you have any questions about this opinion or how it affects your workplace, contact your Fisher & Phillips attorney or David Whitlock, head of our Immigration Practice, or visit our website at www.laborlawyers.com.*

# LEGAL ALERT

## DHS Mismatch Rule Published Today

The final mismatch or "no match" regulation appears in today's Federal Register. Thus, the rule will be in effect September 14, 2007. Employers need to get ready now.

The Bush administration has acknowledged that it delayed publication of a final rule in the hope that Congress would enact comprehensive immigration reform legislation. At the same time, the Social Security Administration held off on sending out mismatch letters based upon 2006 W-2 returns. Now that the final mismatch regulation has been published SSA will begin sending out mismatch letters. Sources within the administration confirm that the mismatch letters will be staggered over the next several months so that the Social Security Administration is not inundated with persons seeking to correct name-number mismatches.



**DHS/SSA Coordinated Effort**

The mismatch letter will be accompanied by a letter from the Department of Homeland Security explaining the final rule in detail and describing the procedures that an employer should follow upon receipt of the letter. DHS confirmed that it will be placing its letter in the SSA envelope. As a result, it is possible that DHS will know which employers are receiving mismatch letters and could use this information for follow up enforcement efforts. When asked to confirm whether or not this would occur, a senior DHS spokesperson merely repeated the DHS would be stuffing the SSA envelope.

DHS also has confirmed that it will be raising the civil money penalty for knowing employment violations by as much as 25%. We expect that DHS will publish a regulation to that effect sometime in the next couple of months. In addition, DHS will publish a regulation by the end of the year that would require all federal contractors to participate in the online E-Verify program (formerly known as Basic Pilot). When asked if employers volunteering to enroll in E-Verify would be subject to investigations, DHS confirmed that investigations would continue when employers are suspected of abusing the system.

**Steps Employers Should Take Now**

*Hiring.*

Because workers named in the mismatch letter are allowed to continue working during the 90-day period for correcting the mismatch error, and because those letters will start to go out in the next couple of weeks, employers should anticipate a very tight labor market beginning around Thanksgiving and lasting for several months or longer. Thus, employers that received mismatch letters in recent years and that expect to receive one again should consider ramping up recruitment and hiring efforts to replace workers who will need to be terminated if they cannot cure a mismatch problem.

Similarly, employers with a seasonal need for more workers in late Fall and Winter should begin thinking about steps they will need to take to recruit and hire legal workers. Employers may want to consider alternative staffing arrangements through staffing companies and temp agencies. Employers that anticipate receiving a mismatch letter in the next few weeks may wish to begin ramping up recruitment efforts now to replace those workers who quit when notified of a mismatch error.

*Correcting Mismatch Problems.*

If you receive a mismatch letter, act quickly to examine your records to see if the mismatch is due to a clerical or administrative error. If so, correct this and notify SSA. You must also verify that the corrected name and number match SSA records. You can do this by using the SSA toll-free telephone number (1-800-772-6270) or by using the free, online Social Security Number verification system (go to www.ssa.gov/employer/ssnv.htm to enroll).

OMB No. 1615-0047; Expires 03/31/07

# Employment Eligibility Verification

## INSTRUCTIONS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1- Employee.** All employees, citizens and noncitizens, hired after November 6, 1986, must complete Section 1 of this form at the time of hire, which is the actual beginning of employment. **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

**Preparer/Translator Certification.** The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1 personally.

**Section 2 - Employer.** For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors.

Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, Section 2 must be completed at the time employment begins. **Employers must record: 1)** document title; **2)** issuing authority; **3)** document number, **4)** expiration date, if any; and **5)** the date employment begins. Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. **However, employers are still responsible for completing the I-9.**

**Section 3 - Updating and Reverification.** Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1. Employers **CANNOT** specify which document(s) they will accept from an employee.

- If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B and:
  - examine any document that reflects that the employee is authorized to work in the U.S. (see List A **or** C),
  - record the document title, document number and expiration date (if any) in Block C, and
  - complete the signature block.

**Photocopying and Retaining Form I-9.** A blank I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

**For more detailed information, you may refer to the Department of Homeland Security (DHS) Handbook for Employers, (Form M-274). You may obtain the handbook at your local U.S. Citizenship and Immigration Services (USCIS) office.**

**Privacy Act Notice.** The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Customs Enforcement, Department of Labor and Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

**Reporting Burden.** We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: **1)** learning about this form, 5 minutes; **2)** completing the form, 5 minutes; and **3)** assembling and filing (recordkeeping) the form, 5 minutes, for an average of 15 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachuetts Avenue, N.W., Washington, DC 20529. OMB No. 1615-0047.

**NOTE:** This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

**EMPLOYERS MUST RETAIN COMPLETED FORM I-9**
**PLEASE DO NOT MAIL COMPLETED FORM I-9 TO ICE OR USCIS**

OMB No. 1615-0047; Expires 03/31/07

# Employment Eligibility Verification

**Please read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.**

## Section 1. Employee Information and Verification. 
To be completed and signed by employee at the time employment begins.

| Print Name: Last | First | Middle Initial | Maiden Name |
|---|---|---|---|
| Address *(Street Name and Number)* | | Apt. # | Date of Birth *(month/day/year)* |
| City | State | Zip Code | Social Security # |

**I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.**

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen or national of the United States
- ☐ A Lawful Permanent Resident (Alien #) A ____________
- ☐ An alien authorized to work until ____________
  (Alien # or Admission #) ____________

| Employee's Signature | Date *(month/day/year)* |
|---|---|

**Preparer and/or Translator Certification.** *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

| Preparer's/Translator's Signature | Print Name |
|---|---|
| Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)* |

## Section 2. Employer Review and Verification. 
**To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).**

| | List A | OR | List B | AND | List C |
|---|---|---|---|---|---|
| Document title: | ____________ | | ____________ | | ____________ |
| Issuing authority: | ____________ | | ____________ | | ____________ |
| Document #: | ____________ | | ____________ | | ____________ |
| Expiration Date *(if any)*: | ____________ | | ____________ | | ____________ |
| Document #: | ____________ | | | | |
| Expiration Date *(if any)*: | ____________ | | | | |

**CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on** *(month/day/year)* ____________ **and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)**

| Signature of Employer or Authorized Representative | Print Name | Title |
|---|---|---|
| Business or Organization Name | Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)* |

## Section 3. Updating and Reverification. 
To be completed and signed by employer.

| A. New Name *(if applicable)* | B. Date of rehire *(month/day/year) (if applicable)* |
|---|---|

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: ____________ Document #: ____________ Expiration Date (if any): ____________

**I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.**

| Signature of Employer or Authorized Representative | Date *(month/day/year)* |
|---|---|

**NOTE:** This is the 1991 edition of the Form I-9 that has been rebranded with a current printing date to reflect the recent transition from the INS to DHS and its components.

## LISTS OF ACCEPTABLE DOCUMENTS

### LIST A

**Documents that Establish Both Identity and Employment Eligibility**

1. U.S. Passport (unexpired or expired)
2. Certificate of U.S. Citizenship *(Form N-560 or N-561)*
3. Certificate of Naturalization *(Form N-550 or N-570)*
4. Unexpired foreign passport, with *I-551 stamp or* attached *Form I-94* indicating unexpired employment authorization
5. Permanent Resident Card or Alien Registration Receipt Card with photograph *(Form I-151 or I-551)*
6. Unexpired Temporary Resident Card *(Form I-688)*
7. Unexpired Employment Authorization Card *(Form I-688A)*
8. Unexpired Reentry Permit *(Form I-327)*
9. Unexpired Refugee Travel Document *(Form I-571)*
10. Unexpired Employment Authorization Document issued by DHS that contains a photograph *(Form I-688B)*

**OR**

### LIST B

**Documents that Establish Identity**

1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address
2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address
3. School ID card with a photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

**For persons under age 18 who are unable to present a document listed above:**

10. School record or report card
11. Clinic, doctor or hospital record
12. Day-care or nursery school record

**AND**

### LIST C

**Documents that Establish Employment Eligibility**

1. U.S. social security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)*
2. Certification of Birth Abroad issued by the Department of State *(Form FS-545 or Form DS-1350)*
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Native American tribal document
5. U.S. Citizen ID Card *(Form I-197)*
6. ID Card for use of Resident Citizen in the United States *(Form I-179)*
7. Unexpired employment authorization document issued by DHS *(other than those listed under List A)*

**Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)**

CONTRACTOR COMPLIANCE LANGUAGE

1. CONTRACTOR ACKNOWLEDGES IT WILL COMPLY WITH APPLICABLE LAW

Contractor hereby acknowledges and confirms that it will comply with all applicable federal, state, or local laws, regulations, or ordinances affecting Contractor's employment of its workers or otherwise relevant to performance of the services contemplated herein.

2. CONTACTOR CERTIFIES COMPLIANCE

Contractor hereby agrees that it shall certify its compliance with federal, state, and/or local laws, regulations, or ordinances affecting employment, including those related to immigration and verification of lawful status and employability, on no less than an annual basis by means of written notice to [Other Party].

3. CONTRACTOR CERTIFIES I-9 COMPLIANCE

Contractor specifically agrees that it will certify to [Other Party] on an annual basis in writing that Contractor is in compliance with all I-9 requirements with respect to each and every of Contractor's employees.

4. CONTRACTOR CERTIFIES TO ANNUAL SELF-AUDITS

Contractor agrees that it will perform self-audits of its I-9 compliance on no less than an annual basis as measured from the date of execution of this Agreement, and Contractor agrees that it shall certify in writing to [Other Party] that it has completed its I-9 self-audit and resolved any problems or deficiencies identified in the course of said audit.

5. CONTRACTOR AGREES TO FURNISH I-9 FORM UPON REQUEST

Contractor further agrees that upon request, it will furnish to [Other Party] the I-9 form for any employee of Contractor for whom [Other Party] requests confirmation of employment eligibility. It is expressly understood that such request by [Other Party] or compliance by Contractor shall not in any way be construed as suggesting the [Other Party] is the employer of such worker; instead, [Other Party's] request shall be viewed as only an attempt to avoid any possibility that any party might employ an illegal worker.

6. CONTRACTOR AGREES [OTHER PARTY] MAY REJECT CONTRACTOR'S WORKER

Contractor agrees that [Other Party] may refuse services performed by any of Contractor's workers for whom [Other Party] doubts that worker's employment eligibility or is not satisfied that Contractor's I-9 form for said worker is not properly completed.

# CONTRACTOR I-9 COMPLIANCE AGREEMENT

[**Company Name**] (hereafter COMPANY) operates a facility in [location]. COMPANY has contracted with **[Contractor's name]** (hereafter CONTRACTOR) to provide services, and in doing so, CONTRACTOR and COMPANY agree as follows:

**COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAWS:** CONTRACTOR will comply with all federal, state and municipal laws and regulations relating to the performance of its duties hereunder including, but not limited to, those laws and regulations concerning wage and hours, payment of taxes, laws prohibiting discrimination and harassment, and compliance with the requirements of the Immigration Reform and Control Act of 1986.

**ACKNOWLEDGEMENT OF COMPLIANCE:** CONTRACTOR represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act: (1) prohibiting hiring and continued employment of unauthorized aliens, (2) requiring verification and recordkeeping with respect to identity and eligibility for employment, and (3) prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status.

CONTRACTOR specifically agrees that it will certify to COMPANY on an annual basis, or as requested by COMPANY, in writing that CONTRACTOR is in compliance with all I-9 requirements with respect to each and every of CONTRATOR's employees.

By entering into this Agreement, CONTRACTOR certifies that all personnel that are being used, or will be used to perform services pursuant to this Agreement are authorized to work legally within the United States.

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**MAINTENANCE OF RECORDS:** CONTRACTOR shall be responsible for the creation and retention of all employment records or documents required by law, including but not limited to:

- Time and payroll records for all employees of CONTRACTOR performing labor for COMPANY.
- Employment Eligibility Verification Form (I-9) for all CONTRACTOR employees working on COMPANY's premises. The I-9 Form shall be used by CONTRACTOR to verify that persons employed by CONTRACTOR are eligible to work in the United States.

**SELF AUDITS:** CONTRACTOR agrees that it will perform self-audits of its I-9 compliance on no less than an annual basis as measured from the date of execution of this agreement, and CONTRACTOR agrees that it shall certify in writing to COMPANY that it has completed its I-9 self-audit and resolved any problems or deficiencies identified in the course of said audit.

**WORK PERFORMED BY AUTHORIZED INDIVIDUALS:** CONTRACTOR will not allow any of its agents or employees to perform services on behalf of COMPANY or enter upon COMPANY's premises unless said persons are legitimately entitled to work according to the laws of the United States.

**INDEMNITY:** CONTRACTOR agrees to indemnify COMPANY and hold COMPANY harmless from all liability, including liability for interest and penalties, which may be assessed against COMPANY as a result of Contractor's failing to comply with U.S. immigration laws.

| ______________________________ | ______________________________ |
|---|---|
| COMPANY | CONTRACTOR |
| ______________________________ | ______________________________ |
| DATE | DATE |

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