

KIRKLAND ALERT

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USCIS Delays Implementation of New I-9 Form

On January 30, 2009, the U.S. Citizenship and Immigration Services (“USCIS”) announced that it has delayed, *until April 3, 2009*, the implementation of a rule that would require that all documents presented during the employment verification process be unexpired and *also* reduce the list of documents employers may accept when confirming work authorization status for employment applicants or existing employees, as required by law. In addition to revising the list of acceptable documents, the new rule would have required employers to begin using a new I-9 form (the “Employment Eligibility Verification Form I-9”) this month (February 2009).

Significantly, employers should not begin to use the new form — previously made available to employers in the Federal Register, on the USCIS website, and elsewhere — until April 3, 2009, and only then if further governmental action has not resulted in further revision of the new I-9 form or rescission of the original December 2008 USCIS order implementing the new form.

Because the new rule would change the types of documents that are acceptable during the employment eligibility verification process, it is imperative that employers continue to use the current version of the I-9 form (dated June 5, 2007, and attached hereto). Premature use of the new form could expose employers to government claims of unlawful employment practices (national origin discrimination) for specifying/limiting the documents workers or applicants can submit to demonstrate their authorization to work in the United States.

The Department of Homeland Security has suggested the possible imposition of penalties and sanctions for premature use of the new form, even though that form was previously made available to the public. Possible sanctions range from \$475 to \$2,200 per discriminatee for first-time violators, up to \$11,000 per discriminatee for employers with previous immigration violations. Title VII employment discrimination lawsuits are also available options for aggrieved employees/applicants.

Further information regarding changes to the employment eligibility verification form may be found at <http://www.uscis.gov>. The current (acceptable) version of the I-9 form may also be downloaded at <http://www.uscis.gov/i-9>, where the proposed new form can also be found.

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