

Reminder: U.S. Citizenship and Immigration Services' New Digital Form I-9 Has Taken Effect

January 23, 2017

As of Jan. 22, 2017, employers are now required to switch over to the revised Form I-9 for all newly hired employees. This new "smart" Form I-9 can be downloaded at <https://www.uscis.gov/i-9>.

Employer representatives overseeing the employment eligibility and verification process must ensure that the new Form I-9 with the revision date of Nov. 14, 2016 is used for all new hires going forward. When completing the new Form I-9 online, required fields with missing or incorrectly formatted information will now be flagged for completion. The form also offers drop-down menus and a designated blank space to explain unusual circumstances that before could only be written in the margins. All other employer requirements to timely complete, store and retain the Forms I-9 remain unchanged.

Along with the new "smart" Form I-9 taking effect, employers should also be aware of a few practice pointers that may clarify some common questions about this new process.

- Since the new Form I-9 must be used, the old Form I-9 with the revision date of Mar. 8, 2013 will no longer be accepted for new hires after Jan. 21, 2017.
- As implemented by USCIS on Aug. 1, 2016, any Form I-9 paperwork errors – including the failure to use the new forms – will result in significantly higher fines for employers than before. These increased fines also apply to the employment of individuals not authorized to work in the U.S.
- Although there is a Spanish version of the Form I-9, it can only be used by employers and employees in Puerto Rico or as a guide to assist Spanish-speaking employees filling out the English version of the form in the U.S.
- The new Form I-9 was created with the intention that it is completed online to assist with compliance; however, it is not truly electronic. Employers may complete the form online or fill out a printed version of the new document. Whether the form is completed online or by paper, employers must still follow the prior standards for signing, storing and retaining Forms I-9.
- Signature date fields on the new form now require "Today's date" eliminating the ability to backdate the document.
- A new rule went into effect on Jan. 17, 2017 which permits certain Employment Authorization Document (EAD) holders to provide an expired EAD for I-9 purposes for employment up to 180 days after expiration. An expired EAD will be considered unexpired for Form I-9 purposes if the employee also submits proof of a timely filed EAD renewal in the same eligible employment authorization category previously granted as evidenced on a Form I-797C Receipt Notice.

Employers with any questions about the revised forms, or the Form I-9 in general, should contact their Miller Canfield attorney for guidance.