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OFFICE OF BUSINESS LIAISON

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Employer Information Bulletin 102

The Form I-9 Process In A Nutshell

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The following is not intended to be legal advice pertaining to your situation and should not be construed as such. The information provided is intended merely as a general overview with regard to the subject matter covered.

THE FORM I-9 PROCESS IN A NUTSHELL

Purpose

- This bulletin supplements the 1991 version of the "Handbook for Employers" (Form M-274) and the 1991 (rebranded in 2005) version of the Form I-9 and its instructions, which may both be downloaded from the U.S. Citizenship and Immigration Services web site.
- This bulletin provides employers with basic guidance for compliance with requirements to complete, update, and retain Form I-9 for all employees, whether U.S. citizens or non-U.S. citizens.
- **NOTE:** The "receipt rule" described in this bulletin is the most up-to-date receipt rule. The receipt rule stated in the Form I-9 instructions and the "Handbook for Employers" (Form M-274) is **NOT** the current rule. See Receipt Rule below.

Introduction to Worksite Enforcement and Employment Eligibility Verification

The 1986 Immigration Reform and Control Act ("IRCA") sought to control illegal migration by eliminating employment opportunity as a key incentive for unauthorized persons to come to the U.S. IRCA's core prohibition is against the hiring or continued employment of aliens whom employers know are unauthorized to work in the United States. IRCA makes all U.S. employers responsible for verifying, through a specific process, the identity and work authorization or eligibility of all individuals, whether U.S. citizens or not, hired after November 6, 1986. To implement this, employers are required to complete Employment Eligibility Verification Forms I-9 for all employees. An employer's obligation to review documents is not triggered until a person has been **hired**, whereupon the new employee is entitled to submit a document or combination of documents of his choice (**from List A or a combination of documents from List B and List C stated on the reverse side of the Form I-9**) to verify his identity and work eligibility.

Hired = Employee's actual commencement of employment for wages or other remuneration. The employee must complete Section 1 of the Form I-9 by the date of hire (i.e. no later than the date on which employment services start). (See Completing the Form I-9 below.)

Protection from Discrimination¹

IRCA also prohibits employers with 4 or more employees from discriminating against any person (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of a person's national origin or, in the case of a citizen or protected individual, citizenship status. Employers with 15 or more employees may not discriminate against any person on the basis of national origin in hiring, discharging, recruitment, assignment, compensation, or other terms and conditions of employment. The Form I-9 process may not be used to **pre-screen** employees for hiring. Furthermore, an employer may not demand more or different documents than an employee chooses to present, provided that the documents presented are acceptable under the Form I-9 requirements. An employer may not demand documents issued by the Department of Homeland Security (**formerly the Immigration and Naturalization Service**) in lieu of other acceptable document(s) from List(s) A or B and C and may not consider the fact that work authorization documents have future expiration dates as cause for not hiring or for terminating employment.

¹ The Office of Special Counsel for Immigration Related Unfair Employment Practices ("OSC") investigates charges of job discrimination related to an individual's immigration status or national origin. It also investigates charges of document abuse discrimination--when employers request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents or specify certain documents over others. All individuals authorized to work are protected from document abuse. OSC can be accessed via the Internet at <http://www.usdoj.gov/crt/osc/htm/aboutosc.htm>.

