Frequently Asked Questions about Employment Eligibility Verification and the I-9 Compliance Process

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The 1986 Immigration Reform and Control Act ("IRCA") prohibits employers from knowingly hiring or continuing to employ unauthorized workers. All U.S. employers are responsible for verifying, through a specific process, the identity and work authorization eligibility of all individuals, whether U.S. citizens or otherwise. To comply with the law, employers are required to complete an Employment Verification Form I-9 for all new employees hired after November 6, 1986. The I-9 must be completed within three days of hire.

As the immigration debate heats up, the Department of Homeland Security, through its enforcement division, Immigration and Customs Enforcements (ICE) has undertaken a massive new enforcement effort directed at employers. The focus on enforcement is clearly evidenced by the rising number of high profile worksite audits, increased heavy civil penalties and criminal prosecutions resulting from worksite violations. Based on the recent trend, employers should take steps to ensure that their “house” is in order as the government has made it clear that it intends to come “knocking at the door.”

The following are some answers to frequently asked questions that arise in the I-9 compliance context:

Who is required to complete Form I-9?

All U.S. employers are responsible for completion and retention of Form I-9 for each individual hired after November 6, 1986. This includes citizens, nationals and non-citizens. U.S. citizens include persons born in Puerto Rico, Guam, the U.S. Virgin Islands and the Northern Mariana Islands. Nationals of the United States include persons born in American Samoa, including Swains Island.

Practice pointer: You should not complete Form I-9 for job applicants – you only need to complete Form I-9 for people you actually hire. The law requires completion of Form I-9 when the employee actually starts working, but an employer may complete the form earlier as long as the person has been offered and accepted the job. The I-9 process cannot be used to screen job applicants.

Who is exempt from the I-9 process?

You do not need to complete a Form I-9 for persons who are:

- Hired on or before November 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times; this exception does not apply to seasonal employees or employees who change employers within a multi-employer association; or
- Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis; or
- Providing labor and are employed by a contractor providing contract services (e.g. employee leasing or temporary agencies); or
- Not physically working on U.S. soil; or
- Independent contractors.

Must an employer verify employment authorization of independent contractors?

Completion of Form I-9 is not required for independent contractors. Whether someone is an independent contractor is generally determined by a series of factors, including if the individual has an independent business, if the person makes services available to the
general public, whether the person works for a number of clients at the same time, whether the person directs the work to be done and determines the number of hours during which the work must be done. The focus is essentially on the amount of control the employer has over the worker.

However, while employers are not required to complete Form I-9 for independent contractors, employers may not use independent contractors to circumvent the law against hiring unauthorized aliens. Employers may still be held liable if they have constructive knowledge of such unauthorized employment.

How can an employer ensure that they are using the most current version of Form I-9?

The current version of Form I-9 has a revision date of (Rev. 03/08/13) that can be found in the lower right hand corner of the form. This version of the Form I-9 expires on 03/31/2016 and is the only version valid for use. The form can be found at: http://www.uscis.gov/files/form/i-9.pdf

Practice pointer: The Spanish version of Form I-9 may only be completed by employers and employees in Puerto Rico. Employers in Puerto Rico may use either the Spanish or English version. Spanish-speaking employers and employees in the 50 states and other U.S. territories may print the Spanish version for reference, but may only complete the form in English to meet employment eligibility verification requirements.

What is the difference between the new version of the Form I-9 and previous versions?

The main difference between the current version of Form I-9 and the previous Form I-9 is that the form is now two pages, where before it was just one – now the employee fills out the first page, and the employer fills out the second.

In addition, there is now a dedicated section for a third “List A” document, so that employers are able to add in DS-2019 and I-20 details for those foreign national employees in F-1 and J-1 status. The new form also includes clearly designated “expiration date” fields for List B (identity) and List C (proof of the right to be employed) documents.

Lastly, the previous section 3, “Updating and Reverification,” has been renamed “Reverification and Rehires.” The new Form I-9 instructions appear to indicate that section 3 only needs to be updated in a rehire or reverification situation and is not required to be updated for employee changes of name, for example where an employee gets married.

The Handbook for Employers (M-274) has also been updated several times and the current version (April 2013) is available for free at http://www.uscis.gov/files/form/m-274.pdf

As way of background, some of the previous I-9 changes include but are not limited to the following:

Certificates of U.S. Citizenship (Form N-560 or N-561), Certificates of Naturalization (Form N-550 or N-570), Alien Registration Receipt Cards (I-151), Unexpired Reentry Permits (Form I-327) and Unexpired Refugee Travel Documents (Form I-571) were removed from List A. An unexpired Employment Authorization Document (I-766) was added to List A.

All the Employment Authorization Documents with photographs (I-688, I-688A, I-688B, I-766) were consolidated as one item on List A.

As part of the previous update, USCIS confirmed that an employee is not obligated to provide a Social Security number in Section 1 of Form I-9, unless he or she is employed by an employer who participates in the E-Verify program. The previous update also included information about electronic retention of I-9s.

Practice Pointer: The only acceptable version of Form I-9 is the Rev. 03/08/13. More importantly, employers cannot accept documents that used to be on any of the old Form I-9’s but which are no longer listed on List A, B or C. When re-verifying employees, employers should ensure that they use the current Form I-9’s updated list of acceptable documents.

What documents are required to complete Form I-9?
An employer’s obligation to an employee is not triggered until a person is hired. All pages of the five-page I-9 form, including the instructions must be given to the employee when hired. It is not appropriate for the employer to request specific documents from List A, or a combination of documents from List B and C. By providing the employee with all five pages, it allows the employee to choose which documents to produce for verification purposes.

**Can an employer accept documents that used to be on the Form I-9 but aren’t now?**

No. Beginning April 3, 2009, employers may only accept documents on the “List of Acceptable Documents” on the current version of Form I-9. An employer may not reverify the employee by completing Section 3 on a previous version of the form.

**Practice Pointer:** Based on the new change, employers may no longer accept any expired documents as proof of employment verification, including an expired U.S. passport, any expired document from List B to establish identity.

**Is an employee required to provide a Social Security Number on Form I-9?**

An employee is not obliged to provide the Social Security Number in Section 1 of the Form I-9, unless he or she is employed by an employer who participates in the E-Verify program.

**Can an employer accept a “restricted” Social Security card for verification or reverification purposes?**

A restricted Social Security card may state “not valid for employment” or “valid for work only with DHS authorization.” If an employee presents a “restricted” Social Security card, the employer must reject the card, since it is not an acceptable Form I-9 document and ask the employee to choose different documentation from the List.

**Can employers accept a photocopy of a document as proof of employment?**

The employer must personally examine the original of a document that demonstrates an employee’s identity and eligibility to work in the United States. Photocopies representing original documents are not acceptable. The only exception is that an employee may present a certified copy of a birth certificate.

**Practice pointer:** The employer representative who signs the form must be the person who examines the original documents presented.

**As an employer, do I have to fill out all the Forms I-9 myself?**

No, you may designate someone to fill out the Forms I-9 for you, such as a personnel officer, foreman, agent or anyone else acting in your interest, such as a notary public. However, if someone else fills out Form I-9 on your behalf, they must carry out full I-9 responsibilities. For example, it is not acceptable for a notary public to view employment authorization and identity documents, but leave Section 2 for you to complete. The person who views an employee’s employment authorization documents should also complete and sign Section 2 on your behalf. However, you are still liable for any violations of the employer sanctions laws.

**How can an employer know if a document is real?**

The employer must verify the employee’s eligibility and identity from the documents presented and record that information on the I-9 form. When examining the documents presented, the standard for review of documents in the employment verification process is that of “reasonableness.” An I-9 List document is acceptable if it reasonably appears on its face (1) to be genuine and (2) relate to the individual who presents it.

An employer who signs Section 2 of the Form I-9 is not attesting to the legitimacy of the status of the person who presents the document but, rather, to the fact that he or she has reviewed the original document and that it reasonably appears to him or her, upon reasonable
inspection of its features and information it contains, to be genuine and to relate to the employee who has presented it for employment verification purposes.

If an I-9 list document does not meet the reasonable standard, the employer should reject the document for employment eligibility verification purposes and ask the individual to produce other acceptable I-9 documentation. In cases where the employee does not produce acceptable documentation that appears to be genuine and to relate to the individual presenting it, the employer should not continue to employ the individual, or it may be subject to penalties for improper completion of the form or for “knowingly continuing to employ” unauthorized workers, if such workers are in fact unauthorized.

Practice pointer: Employers should be alert for signs of fraud, such as a social security card that contains more than nine digits or that begins with “000” or “800” or “900” which are unused numbers.

How is “constructive knowledge” defined?

Knowingly hiring or continuing to employ unauthorized aliens is a serious violation that subjects an employer to civil and, where there is a pattern or practice of such violations, criminal penalties. In this context, the term “knowing” includes not only actual knowledge but also knowledge which may fairly be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition. Constructive knowledge may include, but is not limited to, situations where an employer: (1) fails to complete or improperly completes the Form I-9; (2) has information available to it that would indicate that the alien is not authorized to work; or (3) acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its work force or act on its behalf.

Should an employer make a copy of the document provided by the employee?

Employers that participate in E-Verify where an employee presents a document used as part of the Photo Screening Tool (currently the Permanent Resident Card (I-551), the Employment Authorization Document (I-766) and a U.S. passport or U.S. passport card, must retain a photocopy of the document that the employee presents.

Employers that do not participate in E-Verify are not required to copy a document (front and back) presented by an individual solely for the purpose of complying with the Form I-9 verification requirements. In the past, the common practice was not to copy supporting documents because the copies could reveal errors in the I-9 compliance process. Given the current trends in enforcement, it may be advisable to establish a practice of copying the supporting documentation.

Having a copy of the original document that was used as part of the verification process is critical to the efficient review and correction of Forms I-9 during an internal audit. It is also useful in a government audit or investigation as it is a defense against a claim that relevant documents were never presented. Moreover, the copy could serve as a good faith defense if the copy shows that the document on its face, reasonably appeared to be genuine.

If a copy is made, it must be retained with Form I-9. Employers should also make sure that this practice is applied consistently across the board for all employees, and never just for individuals of certain national origin or citizenship status. To do so may constitute unlawful discrimination under section 247B of the Immigration and Nationality Act.

Photocopies must not be used for any other purpose. Photocopying documents does not relieve an employer of the obligation to fully complete Section 2 of the Form I-9 nor is it an acceptable substitute for proper completion of the Form I-9 in general.

What should an employer do, if the employee is unable to provide the required documents within three business days of the date employment begins?
If the individual cannot produce an original within three business days from the date employment begins, the employer may accept a receipt for a replacement document (in accordance with the “receipt rule”) if the document is lost, stolen or damaged. An employee who presents a receipt for a lost, stolen or damaged document has ninety days to present the original document.

Practice pointer: Employees hired for less than three business days must produce the actual document(s) and the Form I-9 must be fully completed at the time employment begins.

Practice pointer: Although an employee has three days to produce the original documents required for I-9 verification, 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).

What is the most up-to-date “Receipt rule?”

The “receipt rule” is designed to cover situations in which an employee is employment authorized at the time of initial hire or reverification, but he or she is not in possession of a document listed on page 4 of the Form I-9. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. An individual may present a “receipt” in lieu of a document listed on the Form I-9 to complete Section 2 of the Form I-9. The receipt is valid for a temporary period.

There are three different documents that qualify as receipts under the rule.

1. Receipt for a replacement document when the document has been lost, stolen, or damaged. The receipt is valid for 90 days, after which the individual must present the replacement document to complete the Form I-9

Practice pointer: An Employment Authorization Document (EAD or Form I-688B or Form I-766) is generally valid as evidence of work authorization for one year. The EAD may be renewed by the submission of a new application to USCIS. However, a USCIS receipt acknowledging such an application for renewal is unacceptable for verification and reverification purposes.

Practice pointer: How to Complete the I-9 Using the “Receipt Rule”:

- record the document title in Section 2, e.g. Driver License, Social Security Card
- Write the word “Receipt” after the document title and indicate the issuing authority, e.g. CA DMV, SSA
- Record the document number
- Update I-9 within 90 days (except for refugees and I-551 stamp) by crossing or lining out “receipt”, enter the document number if different, expiration date if any, initial and date
- Attach document copy to I-9

2. Form I-94 containing a temporary I-551 stamp and a photograph of the individual, which is considered a receipt for the Form I-551, Permanent Resident Card. The individual must present the Form I-551 before the expiration date of the temporary I-551 stamp, or within one year from the date of issuance of the Form I-94 if the I-551 stamp does not contain an expiration date.

3. Form I-94 containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (i.e., Form I-766 or I-688B) or a combination of an unrestricted Social Security card and List B document. The employee must present acceptable documentation to complete the Form I-9 within 90 days after the date of hire or, in the case of reverification, the date employment authorization expires. DHS regulations provide that if it does not adjudicate an application for employment authorization within 90 days, it will grant an employment authorization document valid for a period not to exceed 240 days.

Practice pointer: Individuals under the Temporary Protected Status (TPS) Program whose EADs are subject to an automatic extension may continue to work with expired EADs during the automatic extension period specified in the Federal Register Notice announcing the extension.

Can an employer fire an employee who fails to
produce the required documents in three days?

An employer may terminate an employee who fails to produce a required document or a receipt for a replacement for a lost, stolen or damaged document within three business days of the date employment begins. Otherwise, an employer may be subject to penalties for “knowingly continuing to employ” an unauthorized worker if the employee is not in fact authorized to work. However, this practice must be applied uniformly to all employees.

When do employers need to reverify employment eligibility?

The reverification requirement does not apply to a U.S. passport or “green card” (Form I-551) or expired List B document.

Employers are required to reverify employment eligibility when an employee’s employment authorization (as indicated in Section 1) or evidence of employment authorization recorded in Section 2 has expired. Employers must reverify employment authorization no later than the date that employment authorization expires.

Reverification is completed in Section 3 of Form I-9 and must be signed in the appropriate space. If an earlier version of the Form I-9 is used, an employer must now complete Section 3 of the latest Form I-9 for reverification. The employer should note the employee’s name in Section 1, complete Section 3 and attach the new form with the original I-9. Alternatively, an employer may choose to complete a new Form I-9.

Practice pointer: Employees are not required to present, for reverification purposes, a new version of the same document that was presented to satisfy Section 2 but subsequently expired. Any document or combination of documents that would be acceptable to demonstrate work eligibility/authorization under Section 2 may be presented for reverification purposes. It is the employee’s choice as to which documents to present.

Practice pointer: The temporary evidence of permanent residence status in the form of an unexpired foreign passport containing a temporary I-551 ADIT stamp is subject to the reverification requirement. This is because of the temporary nature of this document.

When is reverification not required?

Permanent Residence Cards (also known as Alien Registration Receipt cards, Forms I-551, Resident Alien Cards, Permanent Resident Cards, or Green Cards) are issued to lawful permanent residents and should not be reverified when the cards expire. Although the card expires, the alien’s status does not. This also applies to conditional, two-year green cards.

Additionally, an employer should not reverify a worker’s employment eligibility based on a change in the employee’s employment status as long as the person is a “continuing employee.” A “continuing employee” is anyone who has a “continuing expectation of reemployment at all times.” Examples include the following:

- an employee who has taken an approved paid or unpaid leave for study, illness, disability, pregnancy, maternity or paternity leave, vacation or other temporary leave approved by an employer
- an employee who is promoted, demoted or gets a pay raise
- an employee who is temporarily laid off due to lack of work
- an employee who is on strike or involved in a labor dispute
- an employee who transfers to another company office at a different location
- an employee who continues in a job with a related, successor or reorganized employer, as long as the new employer obtains and maintains the previous employer’s records and I-9s
- an employee who is engaged in seasonal employment
- an employee who is reinstated after disciplinary suspension or wrongful termination, found unjustified by any court, arbitrator or administrative body, or otherwise resolved through reinstatement or settlement.
**Practice pointer:** An employee’s change in employment status, e.g., change in location or promotion may, however, impact their nonimmigrant employment eligibility and require the filing of an amended nonimmigrant petition with USCIS.

**What should an employer do if it rehires a person who previously completed Form I-9?**

If you rehire an employee within three years of his or her original hire date and you have previously completed Form I-9 for that employee, you may complete a new Form I-9 or you may be able to rely on the previously completed Form I-9 in certain circumstances.

1. If the employee’s previously completed Form I-9 indicates that the person is still eligible to work, you are not required to complete a new Form I-9 but may rely on the previously completed Form I-9 in Section 3 with the date of rehire OR

2. If you determine that the employee’s employment authorization has expired, you must reverify employment authorization in Section 3 of the previously completed Form I-9 or use a new Form I-9 if Section 3 has already been used.

**Practice Pointer:** If the version of the Form I-9 that you used for the employee’s original verification is no longer valid, you must complete Section 3 of the current Form I-9 upon reverification and attach it to the employee’s original Form I-9.

**How do employers document extensions of stay for certain nonimmigrants continuing employment with the same employer?**

The following visa classifications for nonimmigrants with pending applications to extend their stay are automatically authorized to continue employment with the same employer for a period not to exceed 240 days beginning on the date of the expiration of the authorized period of stay: E-1, E-2, H-1B, H-2B, H-3, L-1A, L-1B, O-1, O-2, P-1, P-2, P-3, Q-1, Q-2, R-1 and TN (8 C.F.R. § 274a.12 (b)(20)). In these situations, an employee may present a USCIS receipt (Form I-797). To document this extension of an employee’s employment authorization, Section 3 of the I-9 should be completed in the following manner:

- Document Title: Form I-797 Receipt
- Issuing Authority: USCIS
- Document #: use the USCIS receipt number
- Expiration date: Write “240-Day Ext” and record the date you submitted Form I-129 to USCIS in the margin of Form I-9 next to Section 2.

Once the extension of status is approved or by the end of the 240-day period (whichever comes first), update Section 3 with the new expiration date, initial and date or complete a new I-9.

Attach the following to the Form I-9:

- A copy of the new Form I-129;
- Proof of payment for filing a new Form I-129; and
- Evidence that you mailed the new Form I-129 to USCIS – once you receive the I-797 Receipt Notice, attach it to the I-9.

**How do employers complete I-9s for H-1B transfers based on AC 21 portability?**

An employee who currently holds H-1B status may “port” to a new employer, i.e. change jobs, upon filing of a new petition with USCIS as long as the individual is in lawful status and has not engaged in unauthorized employment since his/her last lawful admission.

In this situation, Section 2 of Form I-9 must be completed with the following:

- H-1B employee’s Form I-94 card issued for employment with the previous employer;
- Unexpired foreign passport information;
- Write “AC-21” and record the date the I-129 petition was submitted to USCIS in the margin of Form I-9 next to Section 2.
Once approved, update the I-9 at Section 3 by recording the document title, number and expiration date.

Attach the following documents to the I-9 form:

- Evidence (e.g. courier receipt) that you mailed the H-1B petition to USCIS; replace it with the copy of the USCIS I-797 Receipt Notice once you receive it.
- A copy of the new Form I-129
- Proof of payment for filing a new Form I-129;
- Copy of the alien’s I-94 card (demonstrating lawful admission into the United States and existing H-1B status).
- Copy of unexpired foreign passport.

**How do employers complete I-9s for F-1 students applying for a 17-month STEM OPT extension?**

An F-1 student who has timely filed an application to extend OPT based on a STEM degree, is authorized to continue working while the extension is pending, for a period not to exceed 180 days.

The following documents are required to complete the I-9 process:

- Expired EAD card
- New Form I-20 (updated to show that the school recommended the STEM authorization, beginning on the date after the expiration of the EAD).

This is the equivalent of an unexpired Employment Authorization Document under List A, of the Form I-9. This combination of documents satisfies the I-9 requirements for 180 days (or less if the application is denied).

Once the extension is approved, the student will receive a new EAD. The employer must update the I-9 with the new EAD expiration date.

**How do employers complete I-9s for F-1 students with automatic employment authorization under the “cap-gap” provision?**

The following documents are required:

- New Form I-20 showing that the F-1 student’s employment authorization dates have been extended and the effective dates
- Expired EAD card
- USCIS Receipt Notice showing receipt of H-1B petition. If the receipt notice has not yet been issued, the expired card and Form I-20 are sufficient.

The combination of documents satisfies the I-9 requirements until September 30, or on the date of the rejection, denial or revocation of the petition. If the student presents a cap-gap Form I-20 without a receipt notice, the employer must re-verify upon the expiration date noted on the Form I-20 but not later than October 1. The student may present another cap-gap Form I-20 indicating continued work authorization to satisfy the re-verification requirement.

**Should an employer keep I-9s in personnel files?**

Completed Form I-9s are not filed with U.S. Immigration and Customs Enforcement (ICE) or USCIS. However, employers are required to retain Forms I-9 in their own files, which must be available for inspection by authorized U.S. government officials, including ICE, the Department of Labor and/or the Office of Special Counsel for Unfair Immigration-Related Employment Practices for the Department of Justice. It is advisable to keep I-9 forms separately to the company’s personnel files. Having the I-9 forms mixed with personnel files provides access to other potentially damaging information from a personnel file that could be accidentally discovered during an I-9 audit or investigation.

**How should an employer organize Form I-9s?**

It is advisable to organize Form I-9s alphabetically in three categories:

- I-9s for current employees
• I-9s for employees with expiration dates that require reverification
• I-9s for terminated employees that may require purging at the appropriate time. Organize these “terminated” I-9s based on the year of termination as this makes it easy to purge or destroy at the appropriate time

How long should an employer keep Form I-9s?

Employers should have a system to purge or destroy I-9 forms as legally permitted. An I-9 form may be destroyed or removed three years after the date of hire, or one year after the date of termination, whichever is later. Otherwise, in an audit situation, the company could expose itself to additional sanctions from old, but problematic I-9 forms that could have been purged or destroyed.

Example #1
Hired: 3/1/2000
Left: 5/1/2001
Retain until: 3/1/2003

Practice pointer: As a practical matter, retain all I-9s for three years from the date of termination; store I-9s in binders based on the year of termination and discard the binder contents after three years. Make a notation in the HR file that the I-9 was completed, along with the date of completion.

How does a merger, acquisition or restructuring affect the I-9 process?

The government advises that employers that acquire a business as a result of a corporate reorganization, merger, or sale of stock or assets, and retain the predecessor’s employees, are not required to complete new Forms I-9 for those employees and instead, may choose to rely on the Forms I-9 completed by the predecessor employer if the employees are continuing in employment and if they have a reasonable expectation of employment at all times. However, the successor employer will be held responsible if the predecessor’s Form I-9s are deficient. Therefore, it would be prudent for an employer involved in a merger or acquisition, at minimum, to conduct an internal audit of existing I-9 forms to ensure compliance. If the acquiring company discovers any mistakes or evidence that the previous employer employed workers without valid employment authorization, the acquiring company has an obligation to immediately take steps to cure the violations.

How does an employer correct mistakes or omissions on a Form I-9?

It is never too late to complete or correct an I-9. If the employer discovers that some employees have not completed I-9s, complete the forms immediately and have the employees provide the appropriate documents. The new Form I-9 should be dated when completed and never backdated.

If mistakes are discovered, make the corrections, initial and date the I-9 form. Never try to hide or disguise information. Changes should never be backdated, deleted or “whited-out” or “blacked-out.” It is acceptable to draw a line through the incorrect information. Above the crossed-out information, the accurate information can be included, preferably in a different color ink, initialed and dated along with a notation, “corrected during self-audit.”

If omissions are discovered, the omitted information should be added to the I-9. The person adding the information should initial and date the new information in different color ink and note “corrected during self-audit.”

By correcting errors and omissions, it demonstrates diligence and good faith on the employer’s part.

Practice pointer: Any changes to Section 1 must be made by the employee.

Is a Social Security Number required to hire an individual?

Contrary to popular belief, neither immigration law nor federal tax law require an employee to possess a social security number (SSN) to commence employment. A social security card is listed as a List C document on Form I-9, but the number is not required to begin
working. The Internal Revenue Service only requires that an application for a SSN be made within seven days of commencing employment for taxable wages. An employee may start working while the SSN application is being processed.

As a practical matter, the main obstacle to commencing employment is the software of a third-party payroll preparer, which cannot generate a paycheck without the SSN. Under these circumstances, if permitted by its system, the preparer can use a “dummy” SSN solely to generate the paycheck, provided the actual SSN or other required information is provided on the information returns at the time of filing wage reports. Employers should also obtain as much information as possible, including the employee’s full name, address, date of birth, place of birth, father’s full name, mother’s full maiden name, gender and the date he or she applied for a SSN. Once the employee receives his or her SS card, a Form W-2c (Corrected Wage and Tax Statement) may be filed to show the employee’s correct SSN.

More information about how to handle wage reports can be found at: http://ssa.gov/employer/hiring.htm.

When foreign nationals apply for SSNs, the Social Security Administration (SSA) verifies their documents directly with the Department of Homeland Security (DHS). Most applications are verified immediately, but there can be delays in the issuance of a SSN. The SSA advises applicants that it can take 6-8 weeks to receive verification from DHS.

**What offenses can an employer be liable for?**

An employer can be liable for some of the following civil and criminal penalties:

**Civil penalties include some of the following:**

- Hiring or continuing to employ unauthorized aliens
- Failing to comply with Form I-9 requirements
- Enjoining pattern or practice violation

**Criminal penalties include some of the following:**

- Engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens
- Engaging in fraud or false statements or otherwise misusing visas, immigration permits and identity documents

A comprehensive listing of civil money penalties and criminal penalties is listed on Pages 29-31 of the M-274 Handbook for Employers. Penalties for related offenses involving unlawful discrimination and civil document fraud can also be found here. Penalties are assessed on a per-alien basis.

Other criminal penalties include:

- conspiracy to transport and harbor unlawful aliens
- money laundering

**What is the “good faith” defense (also known as the Sonny Bono amendment)?**

If an employer can show that it has in good faith complied with the Form I-9 requirements, then the employer has established a “good faith” defense with respect to a charge of knowingly hiring an unauthorized alien, unless the government can show that the employer had actual knowledge of the unauthorized status of the employee.

It must be noted that the “good faith” defense only applies to failures occurring on or after September 30, 1996. Therefore, the Bono amendment will not apply if the requirement to complete the Form I-9 should have been met before September 30, 1996.

A good faith attempt to comply with the paperwork requirements, may be adequate, notwithstanding a technical or procedural failure to comply, unless the employer has failed to correct the violation within 10 days after notice from DHS, or the employer is engaging in a pattern or practice of violations.

Technical or procedural failures include:
Substantive failures include:

- employer’s failure to ensure that an employee provides his or her printed name
- employer’s failure to ensure that the individual checks the box attesting to whether he or she is a national or citizen of the United States, a permanent resident or an alien authorized to work until a certain date
- employer’s failure to review and verify a proper List A document or proper List B and C document
- employer’s failure to provide the document title, identification number or expiration date of a proper List A, B or C document (unless a copy is retained and presented at the I-9 inspection)
- employer’s failure to sign the attestation
- employer’s failure to date Section 2 of the I-9 within 3 business days of the hire

There is currently no guidance on whether the use of an older I-9 is a procedural or substantive error. There is also no guidance on whether acceptance of a newly eliminated document for an authorized worker is a procedural or substantive error.

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Wolfsdorf's "outstanding consular law practice" and called him a "cutting-edge thinker." The Martindale-Hubbell peer review ratings have consistently given Mr. Wolfsdorf an “AV” rating, the highest possible rating in ethics and competence.

Mr. Wolfsdorf is also listed in the Best Lawyers in America 2012, Martindale Hubbell's Pre-eminent Specialist Directory, Southern California Super Lawyers 2012 (where was listed in the Top 100 lawyers), Chambers USA 2011 and the Chambers Global World's Leading Lawyers for Business 2011.

Mr. Wolfsdorf has authored numerous publications on immigration law and frequently lectures on visa/consular matters. He is renowned for his knowledge of immigration law and his ability to successfully navigate complex immigration matters. Mr. Wolfsdorf's leadership positions, vast experience and national prominence have been vital to keeping the firm at the cutting edge of immigration practice. Bernie Wolfsdorf can be contacted at Bernard@Wolfsdorf.com.