

Complying With Federal and Colorado Employment Verification Laws: The New Form I-9 and HB 06S-1017

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Is your company using the right Form I-9? On November 7, 2007, the U.S. Citizenship and Immigration Services (USCIS) released an amended Form I-9, *Employment Eligibility Verification*, which employers are required to use to verify the identity and employment authorization of newly hired employees. While USCIS encouraged employers to begin using the amended form as soon as possible, the regulations allowed for a transition period through December 26, 2007 before sanctions would be sought against employers for using an out-of-date form. Therefore, as of December 27, 2007, all employers not using the amended Form I-9 (dated June 5, 2007) may be subject to penalties. Note that employers do not need to complete an amended Form I-9 for current employees for whom there is already a properly completed Form I-9 on file. But if you have hired an employee since December 27, 2007, and did not have that employee complete the new Form I-9, you should do so immediately.

So what's new in the revised Form I-9? The amended Form I-9 remains substantially the same but there are some significant changes, which include the elimination and addition of certain documents from "List A." "List A" documents are those acceptable for identification and work authorization. There are no changes to acceptable "List B" or "List C" documents. In addition, the instructions for the new Form I-9 clarify that an employee is not required to provide his or her Social Security number in Section 1 unless the employer participates in E-Verify. E-Verify allows employers to electronically check workers' Social Security numbers against a governmental database. Employers may download and copy the new Form I-9 (Rev. 06/05/07) at no charge from www.uscis.gov/files/form/i-9.pdf. A free version may also be obtained by calling 1-800-870-3676.

In addition to using the new Form I-9, Colorado employers should ensure that they comply with C.R.S. § 8-2-122 (HB 06S-1017), which sets forth additional employment verification requirements under Colorado law. Under HB 06S-1017, employers are required, within twenty (20) days of hiring a new employee, to affirm that they have: (a) examined the legal work status of the employee; (b) retained file copies of the identification documents required to complete the Form I-9; (c) not altered or falsified the employee's identification documents; and (d) not knowingly hired an

unauthorized alien.

HB 06S-1017 also requires that employers keep copies (written or electronic) of the affirmation form and all documents that the employer used to complete the Form I-9 for each employee's term of employment. In September 2007, the Colorado Division of Labor announced that it would begin conducting random audits to verify compliance with this law. Employers who with "reckless disregard" fail to submit documentation when requested, or who with "reckless disregard" submit false or fraudulent documentation, may be fined up to \$5,000 for the first offense and up to \$25,000 for any subsequent offense.

For more information regarding these issues or other immigration issues, please contact Angelica Ochoa at (303) 295-8303 or aocchoa@hollandhart.com.

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