

Tony Chap

From: Tony Chap
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Subject: I-9 changes

To Pastors, Parochial Administrators, Parish Business Managers and Secretaries:

The information below was obtained from a reliable source and is intended to convey that the government has revised the I-9 form and your parish should begin using this new form with new employees. You do not need to use this new form with your existing employees as long as you have a completed I-9 in their personnel file. This includes parish employees who may be priests or other clergy.

Employers have until Jan. 22, 2017, to get up to speed on using the newest version of the Form I-9, marked 11/14/2016. The version that has been in effect since 2013 (marked 03/08/13) will become obsolete on that date. The new form can be accessed on the [U.S. Citizenship and Immigration Services \(USCIS\) website](#).

Failure to use the new form beginning Jan. 22 will expose organizations to penalties.

"With a new administration coming in we have a lot of indications that ICE [Immigration and Customs Enforcement] audits will increase, new investigation officers will be hired and enforcement in this area will get a lot of focus," said Cynthia Lange, managing partner of immigration law firm Fragomen's Northern California practice in San Francisco.

"Employers will find that the Form I-9 in many ways is very similar to the previous version, but some individual fields and the form instructions have been revised," said Katie Nokes Minervino, an immigration attorney in the Portland, Maine, office of law firm Pierce Atwood. "The core requirements of the form have not changed," she added. The acceptable documents list and retention requirements have remained the same.

Employers are not required to use the new I-9 on existing employees—one of the most common queries after a new version of the form is released, said Dave Basham, a senior analyst in the verification division at USCIS.

There are now three ways for users to complete the Form I-9:

- Print it and fill it out manually, pen to paper.
- Fill it out electronically, then print and sign it. Take note that using the online "smart" version of the form does not qualify as a compliant electronic I-9. If the online fillable version is used, it must be printed and signed pen to paper.
- Use an electronic I-9 vendor.

Employers using electronic I-9 systems should not experience any direct impact with this form change, Lange said. Electronic systems should simply update the form.

The instructions were more than doubled from six pages to 15 to provide more guidance for users. "The instructions are dense but actually provide a lot of good information to train your HR team," said Montserrat Miller, a partner in the Washington, D.C., office of Arnall Golden Gregory.

Changes to Section 1

Patrick Shen, a partner in Fragomen's Washington, D.C., office, said only the employee can fill out the information in Section 1.

One key change is that users must enter N/A in any fields that they previously would have left blank. For example, if there is nothing to enter in the fields asking for a middle initial, or apartment number or Social Security number, those fields can no longer be left blank.

The main benefit of using the smart version of the form is that once the employee and employer are finished entering information and click out of the form, all entries are reviewed for the correct format, including entries in blocks that require an N/A. If errors are found, the form will signal what needs to be fixed.

Another modification lessens the administrative burden on foreign workers. If the new hire attests to being a foreign national authorized to work in the U.S., he or she can provide either an alien registration number, Form I-94 admission number or foreign passport number. Previously, foreign nationals authorized to work were required to provide both an I-94 number and foreign passport information.

The new form allows for up to five preparers and/or translators to each sign and date the form in his or her own field. The prior form had one field for potentially multiple preparers and translators to fit their signatures in.

"The employee [now] needs to affirmatively check a box indicating that he or she did not use a preparer or translator if that's in fact the case," Minervino said. "This is an important double check for all employers to ensure that this box is completed by the new hire."

Changes to Section 2

Employers are responsible for completing Section 2 of the Form I-9. Lange said the employer representative verifying employment eligibility must be in the physical presence of the person being verified and must also see the original documents being presented.

Although the smart I-9 was an attempt to leverage technology to assist employees and employers in the I-9 process, USCIS stated that using FaceTime or Skype with a new hire to review documents is not permissible under the regulations, Derosby said.

"Employers are still confused about this," Lange added. "Using a webcam or some remote technology is still not acceptable."

Basham said that if an employee is using the online version of the form, Section 2 will self-populate the worker's full name on page 2. A new field asks for the new hire's citizenship or immigration status. Employers must enter the corresponding numeral (1, 2, 3, 4) from the employee attestation on page 1.

There are no changes to the document list columns, but dropdown menus common to electronic I-9s are now available on the online form.

"Use the dropdown to select which document(s) was presented," Basham said. "We don't require HR professionals to be document experts. But HR must accept documents presented by an employee if they reasonably appear to be genuine and relate to the individual."

Shen said that the smart form is "pretty smart, but it's not perfect. Using it is not a safe harbor." He added that it's important for HR to continue to be familiar with immigration-related anti-discrimination laws to stay compliant. If an employer asks too many questions of foreign workers about documents or doesn't accept a valid document, then it could be exposed to liability. "Note that not all acceptable documents are included in the dropdown menus," he said. Even though the scenario is not common, an employer may receive an acceptable document that is not listed and can be open to a discrimination charge if it is rejected.

Finally, USCIS has added a large box for additional information in section 2. This could be used to notate information that used to have to be scribbled in the margins of the form, such as a foreign national's Temporary Protected Status or Optional Practical Training information. "You can use it to include an E-Verify case number, employee termination date, form retention dates, and any other comments for the employer's business process," Miller said. "But make sure whatever comments you write are limited to the Form I-9 or your participation in E-Verify. If your form is the subject of a government investigation, whatever you write on the form is fair game."

No Changes to Section 3

Section 3 regarding reverification has not changed, but any reverifications done after Jan. 22 must be done using the revised form. Reverification must be done when a worker's employment authorization or employment authorization documentation expires. "Employers must remember that workers can show any document that shows right to work and don't have to use the same documents they presented when verified previously," Shen said.

USCIS is [holding a national teleconference](#) on Jan. 31 to review the latest enhancements to the Form I-9 and answer questions from the HR community.

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