The New Form I-9 and Related Compliance Challenges
A Littler Webinar

presented by

Jorge R. Lopez
Shareholder
Co-Chair, Global Mobility & Immigration
Miami, FL
305-400-7504
jlopez@littler.com

Ian R. Macdonald
Shareholder
Co-Chair, Global Mobility & Immigration
Atlanta, GA
404-443-3523
imacdonald@littler.com

Jorge R. Lopez
Shareholder
Co-Chair, Global Mobility & Immigration
Miami, FL
305-400-7504
jlopez@littler.com
Agenda

- Increased audits and penalties
- The new Form I-9
- Preparing the I-9
- Re-verifying Work Authorization
- Amending the I-9
Poll Question

Which do you regularly use to help ensure I-9 compliance (choose as many as apply)

A. Detailed instructions or “how-to’s”
B. Training your HR members who take 1-9 forms
C. Spot audits of forms
D. Placing I-9 compliance on part of HRs’ performance reviews (as appropriate).
Penalties Under IRCA
What Happens if the I-9 is wrong?

HOW TO COMPLETE I-9’S CORRECTLY
ICE Audits

Source: SHRM 03/18/2013
OCAHO Actions

- **Cuts I-9 Fine in Half**
  - Siam Thai Sushi Restaurant - 3/28/2013

- **Reduces I-9 Fine from $34.9K to $14.5K**
  - 7 Elephants Distributing Corp. 3/18/2013

- **Reduces I-9 Fine from $11K to $2.2K**
  - El Azteca Dunkirk, Inc. 3/13/2013

- **Reduces I-9 Fine from $44K to $33K**
  - Black & Blue Steak & Crab 3/1/2013
Civil Penalties - Insufficient Checking

- I-9 paperwork violations result in a penalty of $110 to $1,100 for each individual.
- Document abuse discrimination violations result in a fine of $110 to $1,100.
Civil Penalties - Insufficient Checking

- **Fine per unauthorized worker for Illegal Employment Violations**
  - $375 to $3,200  First Violation
  - $3,200 to $6,500  Second Violation
  - $4,300 to $16,000  Third & Other Violations

- **Criminal Sanctions Likely After First Violation**
Disparate impact on protected class -- e.g. requiring more documents than required by law or rejecting documents that “on their face appear to be genuine”
Recent Office of Special Counsel Settlements

- Healthcare system pays over $250,000 in fines for over documenting foreign nationals
- Vacuum cleaner manufacturer fined for re-verifying permanent residents
- February 2011, a large Mississippi electrical transformer plant agreed to pay a $2.5 million fine for intentionally harboring undocumented workers, even though it was enrolled in E-Verify and a rogue HR manager accepted responsibility.
- Large nationally-operated company fined $250,000 for misuse of E-Verify. Significant because there was no claimant/disgruntled employee – the investigation was triggered by E-Verify exception data alone.
Poll Question

What do you think is your biggest I-9 compliance challenge?

A. Managers who want people hired and don’t see why the I-9 process has to slow down the process.

B. HR who try their best but don’t understand the rules
Preparing the I-9
Not as obvious as you think
Preparing the I-9

Section 1
- Employee Information

Section 2
- Employee Documents verified by the Employer Representative

Section 3
- Re-verification
Legal Definition of Employee and Employer

- **Employee**: “An individual who provides services or labor for wages or other remuneration.” 8 CFR §274a.1(f)

- **Employer**: “An agent or anyone acting directly or indirectly in the interest of the person/entity who engages the services/labor of an employee for wages or other remuneration.” 8 CFR §274a.1(g)
Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins)

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I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

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<tr>
<th>Employer's Signature</th>
<th>Date (month/day/year)</th>
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</table>

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

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<td>Address (Street Name and Number, City, State, Zip Code)</td>
<td>Date (month/day/year)</td>
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</tbody>
</table>

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

<table>
<thead>
<tr>
<th>List A</th>
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CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

<table>
<thead>
<tr>
<th>Signature of Employee or Authorized Representative</th>
<th>Print Name</th>
<th>Title</th>
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<tbody>
<tr>
<td>Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)</td>
<td>Date (month/day/year)</td>
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Section 3. Updating and Re-certification (To be completed and signed by employer.)

A. New Name (if applicable) | B. Date of Relase (month/day/year) [(if applicable)] |
|---------------------------|-----------------------------------------------|
| C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

<table>
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<tr>
<th>Document Title</th>
<th>Document #:</th>
<th>Expiration Date (from):</th>
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| I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

| Signature of Employee or Authorized Representative | Date (month/day/year) |

Only use this version of the Form until May 7, 2013
This version of the Form must be used after May 7, 2013.

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<th>What’s NEW?</th>
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<td>• Phone number (optional)</td>
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<td>• Foreign passport</td>
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Section 2. Employer or Authorized Representative Review and Verification

Employer or authorized representative must complete and sign Section 2 within 3 business days of the employee’s first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the “Lists of Acceptable Documents” on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.

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</table>

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee’s first day of employment (mm/dd/yyyy): (See instructions for exemptions.)

Signature of Employer or Authorized Representative

Last Name (Family Name) First Name (Given Name) Employer’s Business or Organization Name

Employer’s Business or Organization Address (Street Number and Name) City or Town State Zip Code

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable) Last Name (Family Name) First Name (Given Name) Middle Initial

B. Date of Rehire (if applicable) (mm/dd/yyyy):

C. If employee’s previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.

Document Title: Document Number: Expiration Date (if any/mm/dd/yyyy):

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: Date (mm/dd/yyyy): Print Name of Employer or Authorized Representative:
By When Must the I-9 Be Completed?

- **Section 1** is to be completed by the employee on the first day of work (Day 1).
- **Section 2** must be completed by the employee representative within three days of work commencing (Day 3 or earlier).
- **Section 3** must be completed by the expiration date of the employee’s work permit.
**Section 1. Employee Information and Verification** *(To be completed and signed by employee at the time employment begins.)*

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<td>City</td>
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<td>Social Security #</td>
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I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):
- [ ] A citizen of the United States
- [ ] A noncitizen national of the United States (see instructions)
- [ ] A lawful permanent resident *(Alien #)*
- [ ] An alien authorized to work *(Alien # or Admission #)* until *(expiration date, if applicable - month/day/year)*

**Preparer and/or Translator Certification** *(To be completed and signed if Section 1 is prepared by a person other than the employee.)* I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

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<td>Last Name (Family Name)</td>
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<th>Date of Birth (mm/dd/yyyy)</th>
<th>U.S. Social Security Number</th>
<th>Email Address</th>
<th>Telephone Number</th>
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I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- [ ] A citizen of the United States
- [ ] A noncitizen national of the United States (See Instructions)
- [ ] A lawful permanent resident (Alien Registration Number/USCIS Number): ____________________________

An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) ____________________________. Some aliens may write "N/A" in this field.

For aliens authorized to work, provide your Alien Registration Number/USCIS Number or Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: ____________________________

   OR

2. Form I-94 Admission Number: ____________________________

   If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

   Foreign Passport Number: ____________________________

   Country of Issuance: ____________________________

   Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

<table>
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<tr>
<th>Signature of Employee:</th>
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Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

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Employer Completes Next Page
Section 1 - Employee Information and Verification

- Must be completed and signed no later than the first day the employee reports for work
- Name
- Address
- Date of Birth
- Social Security Number (optional – unless E-Verify employer)
- Preparer and/or Translator Certification
- Email address (optional)
- Telephone (optional)

- Attestation
  - A Citizen of the United States
  - A non citizen of the United States
  - Lawful Permanent Resident (Alien Registration Number/USCIS Number______)
  - Alien Authorized to Work Until (expiration date, if applicable, mm/dd/yyyy)

Problem areas
Section 2 - Review and Certification

- One Document in LIST A  **OR**
- One Document in LIST B  **AND**
  One Document in LIST C
- Employer representative’s Signature, Printed Name, Title
- Business Address
- Date
- Must be completed within three day that the employee reports to work.
Section 2 of the I-9 (OLD)

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

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Signature of Employer or Authorized Representative | Print Name | Title

Business or Organization Name and Address *(Street Name and Number, City, State, Zip Code)* | Date *(month/day/year)*

Section 3. Updating and Reverification *(To be completed and signed by employer.)*

A. New Name *(If applicable)*

B. Date of Rehire *(month/day/year) (if applicable)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

.Document Title: Document #: Expiration Date *(if any):*

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative | Date *(month/day/year)*
### Section 2. Employer or Authorized Representative Review and Verification

(For employers and their authorized representatives who must complete and sign Section 2 within 3 business days of the employee’s first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B, and one document from List C as listed on the “List of Acceptable Documents” on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

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#### Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee’s first day of employment (mm/dd/yyyy): [Date] (See instructions for exemptions.)

Signature of Employer or Authorized Representative: ____________________________

Date (mm/dd/yyyy): ____________________________

Title of Employer or Authorized Representative: ____________________________

Last Name (Family Name): ____________

First Name (Given Name): ____________

Employer’s Business or Organization Name: ____________________________

Employer’s Business or Organization Address (Street Number and Name): ____________________________

City or Town: ____________________________

State: ____________________________

Zip Code: ____________________________

### Section 3. Reverification and Rehires

(To be completed and signed by employer or authorized representative.)

A. New Name (if applicable) Last Name (Family Name): ____________
   First Name (Given Name): ____________

B. Date of Rehire (if applicable) (mm/dd/yyyy): ____________________________

C. If employee’s previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.

Document Title: ____________________________

Document Number: ____________________________

Expiration Date (if any)/mm/dd/yyyy: ____________________________

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: ____________________________

Date (mm/dd/yyyy): ____________________________

Print Name of Employer or Authorized Representative: ____________________________
New USCIS Matrix just released
Employer’s Representative’s Role in Section 2

- Establish the identity of the employee
- Verify employment eligibility of the employee
Reviewing the Documents

- If documents appear to be genuine, you must accept them, unless you have knowledge to the contrary.

- However, if you have knowledge that they are not valid, you must escalate to management.
 Updating and Reverification

- Required to reverify if employment authorization document (List A or C) expires
- Do not reverify identity (List B) documents
- Do not reverify Permanent Resident Cards
Practical Advice
Avoiding Common Mistakes
Do Not Ask For Any Documents To Substantiate Section 1

Do Not Ask For Any specific Documents For Section 2

– It is the employee’s election as to which documents to provide. Avoid OSC discrimination charge.

Review Documents Produced For Section 2 Against Section 1 And Give Employee a Chance To Correct Section 1, if necessary
Practical Hints - Section 2

- Accept Any Document Specified in List A, List B or List C, Provided That It Appears To Be Genuine And To Relate To The Employee

- Make Sure Documents Proffered Are On List A, List B or List C
Retaining I-9’s

- Current Employees – Everyone hired after 11/6/1986 has to have I-9.

- Terminated Employees –
  - 3 years from the date of hire or 1 year from the date of termination, WHICHEVER IS LATER
  - Example
    - Hire date is 1/1/2000 – term date is 1/1/2001
    - Hire date is 1/1/2000 – term date is 1/1/2005
What Is the Receipt Rule?

- Under the receipt rule, an individual may present a "receipt" in lieu of a listed document to complete section 2 of the I-9 Form. The receipt is valid for a temporary period.

- BEWARE!
What Is the Receipt Rule? (cont.)

- An employee may present a 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 I-9 Form.
- Note that this rule does not apply to individuals who present receipts for new documents following the expiration of their previously held document.
AUDIT
Amending the I-9
How to Make an Amendment

- Line through the erroneous information in a non-destructive manner.

- Write the new information in the adjacent margin and initial and date the change.

- NEVER use correction fluid or blacken out information!

  - **Example 1:** We have returned the I-9 to you with a circle in the blank where the employee’s signature should be in Section 1. You must have the employee sign Section 1 in that blank, initial and date the change, and return the I-9 to us.

  - **Example 2:** After completing the I-9, you realize that you wrote the incorrect hire date for the employee in the bold portion of Section 2. You line through the erroneous hire date in a non-destructive manner, write the new hire date next to it and initial and date the change.
Poll Question

I would like more information on
(select all that apply)

A. General information about completing I-9 forms.

B. Conducting audits or dealing with the results of audits.

C. Training for HR on completing the forms.

D. A specific question about I-9 compliance at my organization.
A Littler Webinar

THANK YOU

Ian R. Macdonald
Shareholder
Co-Chair, Global Mobility & Immigration
Atlanta, GA
404-443-3523
imacdonald@littler.com

Jorge R. Lopez
Shareholder
Co-Chair, Global Mobility & Immigration
Miami, FL
305-400-7504
jlopez@littler.com