

# I-9 Compliance Guidelines

Presented by:

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THE NATIONAL EMPLOYMENT & LABOR LAW FIRM®

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# **GUIDELINES FOR I-9 COMPLIANCE**

## **I. Introduction**

The Immigration Reform and Control Act of 1986 ("IRCA") requires that a Form I-9 be completed and retained for every employee hired after November 6, 1986. IRCA imposes stiff civil monetary penalties on employers who fail to comply with the law's requirements. U.S. Immigration and Customs Enforcement ("ICE") enforces the IRCA requirements. The following guidelines provide specific instructions for completing I-9 forms and complying with IRCA.

## **II. The I-9 Form**

The I-9 form consists of two parts that must be completed at the time of hire. Section 1 contains basic information about the employee and Section 2 contains several attestations by the employer regarding the documents presented by the employee and the employee's authorization to work. Section 1 of the I-9 form must be completed before work commences. Section 2 is to be completed within 3 business days of work commencing. The law also allows for grace periods to replace or obtain missing documents. As a practical matter, these rules leave much room for error. Accordingly, the better policy is:

- The entire I-9 Form must be completed before a new hire commences work.
- New hires that do not have the required documents with them should be sent home to get the documents and should not be allowed to work until satisfactory documents are produced and the I-9 form is complete.

While this policy may occasionally cause inconvenience, it will also ensure that no forms are completed late. ICE fines for late completion are typically set at \$300 or \$400 per form.

### **A. Section 1 of I-9 Form**

The employee must complete Section 1 of the I-9 form with the employee's name, address, date of birth, Social Security number, and citizenship/immigration status. The employee must sign and date the form, attesting to immigration status and validity of documents presented to establish identity and employment eligibility. The two most common errors in Section 1 of the I-9 form are failing to attest to a status and failing to sign and date the form. These errors can result in the

employer being fined for noncompliance. Therefore, it is vital that the employer ensure that the employee has properly completed Section 1 of the I-9 form.

Be certain that the following fields are completed in Section 1:

- Name and address
- Date of Birth
- Maiden Name (if applicable, and especially if new hire is presenting documents with that name)
- Social Security number (optional, unless the employer participates in E-Verify and then it is required)
- Citizenship/immigration status box, including alien or admission number and/or expiration date, if applicable
- Employee's signature and date

If the employee needs assistance in completing the form or needs a translator, someone may assist the employee, but the employee must sign (or mark) the form in the appropriate section. The person assisting the employee must fill out the block marked "Preparer/Translator Certification." If corrections are needed you should complete the Preparer/Translator Certification and insert the current date. ICE wants to see forms that are properly completed, so do not be afraid to insert the current date even if you are revising a form that was completed previously.

## **B. Section 2 of I-9 Form**

Once the employer ensures that Section 1 of the form is complete, the employer should request that the new hire present acceptable documents verifying identity and employment eligibility. The new hire must be given the choice of what documents to present. It is a good idea to post the list of acceptable documents where I-9 forms will be completed. You can also post it where applications are completed or submitted and/or include it in offer letters or correspondence with prospective new hires. We also recommend that you post a notice where applicants complete or submit employment applications advising applicants that: "We comply with U.S. immigration

laws and do not employ persons unauthorized to work. If hired, you will be required to produce identity and work authorization documentation."

The employer completes Section 2 of the I-9 Form. You must examine the documents presented by the employee to establish both identity and employment eligibility. If the documents reasonably appear to be genuine, you should record the document number and expiration date (where required). If you have any doubts about the validity of any document presented by a new hire, please contact legal counsel or internal resources. Do not contact DHS or ICE. You should not accept any expired identity document or work authorization document.

As the employer's agent, you will be signing a certification stating that the documents: (1) reasonably appear to be genuine; (2) relate to the individual; and (3) authorize the individual to work. The certification also contains a blank for insertion of the actual date work commenced. One of the most common errors in Section 2 is failing to insert this date. You must ensure that the first day of employment is inserted and that Section 2 is signed and dated by the person who examined the documents presented by the new hire. Be alert for the fact that the new hire may have already signed Section 2 inadvertently. If so, simply cross out the incorrect signature and date, and substitute your signature and date as appropriate.

There are three types of documents used to complete Section 2. List A sets forth documents that prove both identity and employment eligibility. List B sets forth documents that establish only identity. List C sets forth documents that establish only employment eligibility. DO NOT ask for more documents if the document or documents presented establish identity and work authorization. For example, if documentation under List A is used, do not ask for any additional documentation. If the new hire provides documentation under List B and C, ensure that there is only one document examined from each list. Do not accept two documents from List B or two from List C. Only accept the listed documents. Do not specify which of the acceptable documents you require of an employee. The employee must be allowed to make his or her own choice from the list. Note that the document list changed in 2007 and 2009. The current, valid document list can be found on the back of the current version of the I-9 form.

### **C. Photocopies**

The regulations allow an employer to make photocopies of documents presented by employees in connection with the I-9 process but do not require employers to do so. To avoid potential claims of discrimination, you should not make photocopies selectively; if you make photocopies of documents, you should do so for all new hires. The current regulation requires the employer to keep photocopies with the I-9 forms, so you must follow the retention rules before discarding photocopies.

### **D. Documentation Issues**

An employee unable to produce an employment eligibility document may present a receipt from an application for a replacement document. For example, new hires who have lost their Social Security card or birth certificate may apply for a replacement and present the receipt from the replacement application. In such a case, the receipt authorizes employment for 90 calendar days from the date it is presented. You should not, however, accept a receipt that is more than 90 days old. Note that receipts cannot be accepted for employees who will work three days or less.

When presenting a receipt for a replacement document, the employee must still complete Section 1 of the form prior to commencement of work. In Section 2, you should record the type of receipt, the receipt or document number, and the end of the 90 day "grace" period. You should keep track of the expiration of the grace period so you remember to ask for an acceptable work authorization document when the grace period ends. You should not specify what document the employee presents at any time in the I-9 process, including at the end of a 90 day grace period. At the time the new documentation is provided, complete Section 3 of the form as reverification (see below) of the individual's right to keep working. Record the document type, number, expiration date (if any), and sign and date Section 3.

Some aliens receive Social Security cards with a legend restricting their employment eligibility. These cards will have the following legend: "Valid for work only with [INS/DHS] authorization." In this case, you may accept the card as a valid List C document, but only if the employee presents some DHS document authorizing employment. The DHS document might not be, and need not be, on the I-9 list. The document could take the form of a letter from DHS telling the employee that he or she is employment authorized. You should record the Social Security number

on the form and also record the expiration date of the DHS document, if any. If there is an expiration date, you will need to reverify (see below) the employee's employment eligibility before it expires.

### **E. Reverification of Employment Authorization**

Reverification, and completion of Section 3, occurs whenever an employee's employment authorization document expires. Some employees may have a limited right to work, which is reflected by means of an expiration date on their employment authorization document. To prevent the continuing employment of someone whose work authorization has expired, the law requires the employer to reverify the individual's continuing employment eligibility. You should follow the same process followed for Section 2, i.e., ask the employee to produce a new employment eligibility document of his or her choosing from the list. If the document reasonably appears to be genuine, record the document type, document number, and expiration date (if any) in Section 3, and sign and date the form. Note that reverification only applies to work authorization documents and not to List B identity documents. Also do NOT reverify eligibility of persons who present a U.S. passport or Permanent Resident or Alien Registration Card (Form I-551) because although their document may expire, their right to work does not.

You may also use Section 3 in certain circumstances when an employee is re-hired rather than completing a new I-9 form. This rule only applies if the individual is re-hired within three years of the completion of the original I-9 form. You should show the form to the employee and ask if everything remains the same. If any information has changed, you must complete a new form. Otherwise, simply record the re-hire date in Section 3, and sign and date the form.

In the event that Section 3 is already completed and you need to record re-hire or reverification information, simply complete Section 3 of a new form, fill in the employee's name in Section 1 of the new form, and attach it to the prior form. We recommend that you write "Reverification Form Only" across the top of the new form.

### **F. Retention of I-9 Forms**

I-9 forms must be retained for three years from the date of hire AND for one year from the date employment ends. Both parts of the test must be met before you may lawfully discard an I-9 form. This means that you must have an I-9 form for all employees hired after November 6, 1986

who are current employees or who have terminated in the last year. You do not need a form for employees hired prior to November 6, 1986 if they have been continuously employed. As part of your I-9 process, you should discard I-9 forms that you are no longer required to keep. Before discarding the form, confirm that you have met both prongs of the retention test.

We recommend that employers maintain a "tickler" or reminder file for I-9 forms that contain an employment authorization expiration date and require reverification. This makes it easier to ensure that timely reverification of employment eligibility occurs. Many employers accomplish this by keeping current employee forms alphabetically, but keeping "tickler" forms separately. These forms are then filed chronologically according to the date the individual's employment authorization document expires.

### **III. Self-Audits**

We recommend that employers conduct a self-audit at least once per year. We also recommend that employers conduct a self-audit if you suspect that you may be audited, that you may have employees without proper work authorization, or that you have not been following the I-9 requirements.

The first step in a self-audit is to confirm that you have all the I-9 forms you should. Generate a list of all current employees and verify that you have a form for each employee hired after November 6, 1986. You should also generate a list of all persons whose employment terminated during the year preceding the self-audit; you should have a form for each such employee who also was hired after November 6, 1986. If you are missing forms from current employees, obtain them as soon as possible. If you missing forms for terminated employees, consider contacting them to obtain a form. It is a good practice to review the I-9 form during an exit interview or before an employee is terminated, as this helps ensure that you have all required forms and that they are properly completed before the individual becomes unavailable.

During periodic self-audits, examine I-9 forms to ensure they are properly completed. Insert any missing information omitted previously and initial and date the changes with the current date. Do not white-out or cover up the information initially entered on the form. If necessary, contact the employee to obtain missing information or to re-examine a document presented by the employee. If you have photocopies of documents employees presented, use them to obtain the missing information. If the employee neglected to sign or date Section 1, ask the employee to do so. Use correct dates to the extent possible. If you add or

revise information in Section 1 of the form, complete the Preparer/Translator certification. We recommend adding "self-audit" next to any form corrections.

## GUIDELINES FOR CONDUCTING AN I-9 AUDIT

1. Generate a list of employees hired since November 6, 1986. The list should match the order in which your I-9 forms are filed . The list should show last name, first name, date of hire, date of termination, and some distinguishing fact, e.g., SSN or DOB, in case two employees have the same name. Ideally, individuals with more than one hire date will appear on the list once for each date of hire, and each prior hire would also show a termination date, so you can determine which forms you may purge.
2. Calculate the I-9 form retention dates for persons on the list by comparing date of hire, date of termination, and the date of your self-audit. The easiest way to do this is to write down the date that is three calendar years prior to the audit date (the target hire date) and the date that is one calendar year prior to the audit date (the target termination date). Forms can be discarded for persons hired before the target hire date whose employment ended before the target termination date. Highlight or cross off the names of the employees on the list whose I-9 forms may be purged.
3. Pull forms for highlighted names from the I-9 file. Do not throw them away until someone else has confirmed that the two retention tests (three years from date of hire and one year from date of termination) have been met. Keep in mind that you may find information on a form that can be purged that may be useful in completing a form which was completed later for the same person (perhaps because of a re-hire).
4. Begin checking I-9 forms for compliance, working in the same order as the names on the list. As each form is reviewed, put a check mark on the list next to the appropriate name. Set aside forms for whom there is no name on the list. These are likely forms for people whose names changed.
5. Flag problems with the forms using stick-on notes. Be aware that forms may have multiple problems.
6. Begin correcting forms that have been reviewed. If you have retained photocopies of documents, you may be able to obtain the information needed to correct many deficiencies from those copies. You may also use information from personnel files to correct the forms. If anything is added to Section 1 of the form, remember to complete the Preparer/Translator portion of the form. Use the

audit date as the date to insert in the Preparer/Translator portion of the form, since it is better to have a "late completion" problem than missing information on the form. Do not white-out or cover up the original information on the form; instead, simply cross out the incorrect information. If you are adding information to Section 2 of the form, initial and date the corrections. We recommend including the words "Self-Audit" as well.

7. If necessary, ask employees to sign or date Section 1 of the form or present correct documents.
8. As forms are corrected, cross out deficiencies on the "stick-on" notes. When all items are crossed out, remove the notes. When the form is correct, refile it. You may wish to annotate or highlight the employee list to show forms that have been corrected. This may help identify recurring problems for purposes of future staff training.
9. There may be some deficiencies that simply cannot be cured. For example, you may have terminated employees from whom you accepted invalid documents, but the form cannot yet be discarded. Annotate the list to show a "major" problem, remove the "stick-on" note, and re-file the form. We recommend that you create a "tickler" or reminder file or some other system for reminding you to discard defective forms when you no longer need to retain them.
10. When you have reviewed all forms and corrected all deficiencies, review the annotated list to see what forms you are missing. See if any of the forms you set aside for lack of a name on the list should be filed under a different name. Consider checking the personnel file to see if a name change has occurred. Any current employees for whom no form can be found should be called in immediately to complete a form.
11. If a significant number of forms are missing or defective for terminated employees, consider keeping separate I-9 files for current and terminated employees. This may be helpful during the process of discarding forms periodically. In addition, there is less likelihood that ICE will ask to see forms for terminated employees if the forms for current employees are in good shape.
12. Add up the number of missing forms and major problems to calculate your exposure. Missing forms are generally penalized at around \$800 per form for the record-keeping violation plus around \$1,500 per form for a knowing employment violation. (ICE assumes that persons without forms are illegal.) Major problems usually result in fines of between \$600 and \$800 per form.

Note that DHS is increasing the amounts of these fines in March 2008. If your exposure is significant, consider a training seminar for staff completing I-9 forms.

13. Discard forms that you are certain you need not keep.

14. Plan and schedule your next I-9 audit.

## CHECKLIST OF PREVENTIVE I-9 MEASURES

1. Do not let employees begin working until the I-9 form is complete. This will reduce the risk of late completion or incomplete forms resulting in fines imposed on the employer. It is also far easier to simply tell the employee to come back the next day with proper documents, rather than having to create a three-day reminder or "tickler" file.
2. Provide initial training for the staff performing verification, as well as updated training as appropriate.
3. Conduct self-audits at least once per year to monitor compliance.
4. Keep I-9 forms in a separate file -- not in personnel folders.
5. Purge I-9 forms during periodic self-audits. Follow the retention rule: three years from date of hire and one year from date of termination. When you meet both tests, throw out the form.
6. Do not seek advice from ICE or DHS. If you have questions, call an expert.
7. Prepare your staff for informal/surprise visits from government agents. Have a "gatekeeper" policy and communicate it.
8. Beware of document abuse discrimination. Do not ask employees for specific documents or more documents than you need to complete Section 2 properly.
9. Review the I-9 form before a worker's employment is terminated. This may be your last chance to get a signature or other necessary information.

## **I-9 FORM**

For your reference, the current version of the I-9 form is provided within this document, beginning on the following page.

**Form I-9, Employment  
Eligibility Verification**Department of Homeland Security  
U.S. Citizenship and Immigration Services**Instructions****Read all instructions carefully before completing this form.**

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the United States) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. 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 presented have a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-8155.

**What Is the Purpose of This Form?**

The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.

**When Should Form I-9 Be Used?**

All employees, citizens, and noncitizens hired after November 6, 1986, and working in the United States must complete Form I-9.

**Filling Out Form I-9****Section 1, Employee**

This part of the form must be completed no later than the time of hire, which is the actual beginning of employment.

Providing the Social Security Number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

**Noncitizen Nationals of the United States**

Noncitizen nationals of the United States are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

**Employers should note** the work authorization expiration date (if any) shown in **Section 1**. For employees who indicate an employment authorization expiration date in **Section 1**, employers are required to reverify employment authorization for employment on or before the date shown. Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the Marshall Islands). For such employees, reverification does not apply unless they choose to present

in **Section 2** evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766)).

**Preparer/Translator Certification**

The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his or her own. However, the employee must still sign **Section 1** personally.

**Section 2, Employer**

For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors. Employers must complete **Section 2** by examining evidence of identity and employment authorization within three business days of the date employment begins. However, if an employer hires an individual for less than three business days, **Section 2** must be completed at the time employment begins. Employers cannot specify which document(s) listed on the last page of Form I-9 employees present to establish identity and employment authorization. Employees may present any List A document **OR** a combination of a List B and a List C document.

If an employee is unable to present a required document (or documents), the employee must present an acceptable receipt in lieu of a document listed on the last page of this form. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Employees must present receipts within three business days of the date employment begins and must present valid replacement documents within 90 days or other specified time.

**Employers must record in Section 2:**

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification in **Section 2**. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. If photocopies are made, they must be made for all new hires. Photocopies may only be used for the verification process and must be retained with Form I-9. **Employers are still responsible for completing and retaining Form I-9.**

For more detailed information, you may refer to the *USCIS Handbook for Employers (Form M-274)*. You may obtain the handbook using the contact information found under the header "USCIS Forms and Information."

### Section 3, Updating and Reverification

Employers must complete **Section 3** when updating and/or reverifying Form I-9. Employers must reverify employment authorization of their employees on or before the work authorization expiration date recorded in **Section 1** (if any). Employers **CANNOT** specify which document(s) they will accept from an employee.

- A. If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B. If an employee is rehired within three years of the date this form was originally completed and the employee is still authorized to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C. If an employee is rehired within three years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B; and:
  - 1. Examine any document that reflects the employee is authorized to work in the United States (see List A or C);
  - 2. Record the document title, document number, and expiration date (if any) in Block C; and
  - 3. Complete the signature block.

Note that for reverification purposes, employers have the option of completing a new Form I-9 instead of completing **Section 3**.

### What Is the Filing Fee?

There is no associated filing fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

### USCIS Forms and Information

To order USCIS forms, you can download them from our website at [www.uscis.gov/forms](http://www.uscis.gov/forms) or call our toll-free number at 1-800-870-3676. You can obtain information about Form I-9 from our website at [www.uscis.gov](http://www.uscis.gov) or by calling 1-888-464-4218.

Information about E-Verify, a free and voluntary program that allows participating employers to electronically verify the employment eligibility of their newly hired employees, can be obtained from our website at [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) or by calling 1-888-464-4218.

General information on immigration laws, regulations, and procedures can be obtained by telephoning our National Customer Service Center at 1-800-375-5283 or visiting our Internet website at [www.uscis.gov](http://www.uscis.gov).

### Photocopying and Retaining Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Form I-9s for three years after the date of hire or one year after the date employment ends, whichever is later.

Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR 274a.2.

### Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

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## Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 12 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529-2210. OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**

**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.)*

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

**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)

Employee's Signature	Date (month/day/year)
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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.*

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

**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).)*

List A	OR	List B	AND	List C
Document title: _____	OR	_____	AND	_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

**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.)

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)
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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): _____
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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 Employer or Authorized Representative	Date (month/day/year)
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## LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

### LIST A

**Documents that Establish Both  
Identity and Employment  
Authorization**

### LIST B

**Documents that Establish  
Identity**

### LIST C

**Documents that Establish  
Employment Authorization**

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	4. Voter's registration card	
	5. U.S. Military card or draft record	
	6. Military dependent's ID card	5. Native American tribal document
	7. U.S. Coast Guard Merchant Mariner Card	
	8. Native American tribal document	6. U.S. Citizen ID Card (Form I-197)
	9. Driver's license issued by a Canadian government authority	
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	<b>For persons under age 18 who are unable to present a document listed above:</b>	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
	10. School record or report card	8. Employment authorization document issued by the Department of Homeland Security
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	

**Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)**

## WHAT TO DO WHEN THE GOVERNMENT ARRIVES

Immigration and Customs Enforcement (“ICE”) has increased staffing levels and increased employer investigations related to violations of IRCA and other laws. The following scenarios describe some of the common ways in which a government official may approach an employer. In each scenario, an employer has options ranging from total acquiescence to insistence upon all legal rights. Employers that say “no” to a government agent run the risk that the agent will escalate the scope or severity of the audit. On the other hand, if the government tramples an employer’s rights then it might have problems enforcing penalties later. Employers should consider their I-9 compliance carefully prior to deciding which position to take with the government.

1. An Agency Official/Investigator Appears With A Notice Of Inspection And Wants To Conduct An On-Site Inspection Immediately. I-9 Forms Are Kept On-Site.

The law requires that the government provide an employer with at least three days notice prior to an inspection of I-9 forms. At the time of inspection, the I-9 forms must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. Therefore, when presented with a Notice of Inspection, the employer may insist on the three days notice. Please note that, although no subpoena or warrant is necessary to inspect I-9 forms, an employer can insist upon a subpoena before granting ICE access to information separate from the I-9 forms.

2. Official Appears With A Notice Of Inspection And Wants To Conduct An On-Site Inspection. I-9 Forms Are Kept At a Different Location.

If I-9 forms are kept at a location other than the location where the request for production is made, the law requires that the employer inform the official of the location where the forms are kept and make arrangements for the inspection. We recommend that the employer provide this information in writing for two reasons. First, a letter to ICE serves as proof that the employer acted in good faith. Second, as a practical matter, ICE may decide not to conduct an inspection at this other location, since the ICE office nearest to where the forms are kept may have its own enforcement agenda.

3. Official Appears With Notice Of Inspection And Wants To Make Copies Of I-9 Forms And/Or Take Forms Away For Copying Or Review.

As discussed above, employers may insist on three days notice before allowing an inspection. At the time of inspection, the law requires that I-9 forms be made available in their original form (or on microfilm or microfiche) at the location where the request for production was made. The law also states that inspections may be performed at an ICE office.

We take the position that this language does not mandate that employers furnish copies of I-9 forms or allow the forms to be copied by ICE. Instead, the employer's willingness to make original I-9 forms available for inspection at the employer's place of business and in accord with the ICE notice of inspection is all that is required. To date, there is no clear statement to the contrary. Officers will almost always want to have original or copies of I-9 forms so that they can scrutinize them in a leisurely manner back at the ICE office. We recommend that employers not be bullied into providing copies or allowing the forms to be copied and returned later. The more time the officer has to review the forms, the more violations the officer is likely to find, if so inclined.

As a practical matter, ICE often asserts that the I-9 forms are government property and that it has the authority to take them off-site. This is nonsense. Nothing in the law even remotely suggests that I-9 forms belong to the government. In fact, the ICE regulations specifically state that the employer must retain the forms. Sometimes, the ICE agent states that copies of all I-9 forms are required to preserve the evidence in case a violation is found. This puts the cart before the horse! The employer's best response to this assertion is to offer to provide a copy of any form ICE claims is in violation. This has the benefit of allowing the employer to keep track of which forms are problematic and correct any ICE misunderstandings or incorrect application/interpretation of the rules.

#### 4. Official Appears With Notice Of Inspection And Subpoena.

As stated above, no subpoena or warrant is required to inspect I-9 forms, but an employer can insist upon a subpoena before granting ICE access to other company and employee information. ICE has recognized that the use of subpoenas does not obviate the three-day notice rule.

Assuming the officer has given three days notice, the employer should allow inspection of I-9 forms. ICE will usually subpoena I-9 forms and "any and all books, lists, payroll records, and personnel records for each employee hired after November 6, 1986." The standard ICE subpoena is very broad; the employer can usually negotiate what must be produced. Also, since ICE subpoenas are not self-enforcing, there is no immediate legal liability for failure to produce

subpoenaed items (other than the I-9 forms). Of course, failure to comply with the ICE subpoena may have adverse practical consequences. Unless the subpoena is unreasonably burdensome, ICE will usually be able to get a federal court order requiring the employer to comply with the subpoena.

5. Official Appears With A Search Warrant.

A search warrant may be used to compel production of I-9 forms or other documents and to search for a person. ICE takes the position that officials with a warrant to search I-9 forms are not required to give the employer three days advance notice. Do not resist a search warrant. Although subpoenas are not self-enforcing, warrants are. Officials are required to establish probable cause to a judge or magistrate in order to obtain the warrant. Retain a copy of the warrant and monitor the search, but stay out of the way. There are procedures for challenging a warrant, but all involve an after-the-fact challenge. Generally, access must be granted immediately to the extent authorized by the warrant.

6. Official Appears With No Notice Of Inspection, Subpoena, Or Warrant And Wants To Inspect I-9 Forms.

As stated above, an employer may insist on three days notice prior to producing I-9 forms for an onsite inspection. Often, the ICE agent will try to persuade the employer to waive advance notice. "I was just in the area ..." "This won't take long ..." "You don't want me to have to come back..." "I just want to report to my boss that you are clean ..." "You do want to comply with the law, don't you?" These are all common lines used to urge waiver. The best course is to insist politely upon advance written notice.

7. Official Appears With No Warrant And Wants To Look For An Employee Believed To Be An Illegal Alien.

As a general rule, an officer may not inspect business premises without a warrant. The public areas of business, i.e., those areas for which the employer has no reasonable expectation of privacy, can be searched without a warrant.

8. Official Conducting I-9 Inspection Asks To See A Particular Employee.

During the course of conducting an I-9 inspection, an officer may begin to suspect that a particular employee is an illegal alien and may wish to interrogate that employee. ICE officials

can ask to speak with employees during an I-9 inspection, but the employer may refuse the request. ICE has stated that officials cannot use access to the workplace for an I-9 inspection as the sole basis for interrogating employees about their immigration status.

## FREQUENTLY ASKED QUESTIONS ABOUT RECENT DEVELOPMENTS IN IMMIGRATION LAW

### 1. What has changed with regard to enforcement of immigration laws?

The government has been very public about drastically increasing enforcement efforts in the past few years. News reports of raids such as the Department of Homeland Security's (DHS) nationwide raid on IFCO's US operations have brought great public attention to this issue. As part of its public relations campaign, DHS announced that it would be more aggressive about enforcement, using the harboring, smuggling, and transportation criminal code provisions to go after companies knowingly employing illegal aliens. Seven managers were arrested as part of the IFCO raids. While the alleged conduct in the IFCO situation was egregious -- shredding W-2s to deliberately pay illegal workers off the payroll -- the investigation and publicity herald a renewed enforcement effort by DHS. The new administration has vowed to continue this focus on employer sanctions, emphasizing that worksite enforcement actions will focus on employers rather than on the unauthorized workers.

### 2. Has the law changed?

No, the federal law remains the same today although the consequences of noncompliance are more severe. Members of Congress have proposed legislation that would radically change the burdens on employers and the penalties for noncompliance, including a requirement that every employer re-verify all current workers and verify all new hires using the Social Security Administration and DHS online system (E-Verify) that in the past have been voluntary or pilot systems. A rule requiring certain federal contractors to enroll in E-Verify will go into effect May 21, 2009. In addition, many states are enacting legislation requiring employers to use these verification systems or establishing other means for employment eligibility verification.

### 3. What are the penalties for noncompliance?

Effective March 27, 2008, failure to complete the I-9 form properly can result in a penalty of \$110 to \$1100 per form. A first violation of the knowing employment prohibition can result in a penalty of \$375 to \$3,200. Multiple violation penalties increase to a maximum of \$16,000; at this stage the employer also is at risk for criminal pattern or practice liability.

**4. Is there a possibility of arrest and indictment for criminal conduct?**

Yes, at both the federal and state levels, but this is highly unlikely for most employers who are trying to comply in good faith. Employers that turn a blind eye to illegal workers or that completely ignore I-9 compliance are more likely to be accused of pattern or practice violations, or worse, smuggling or harboring violations.

**5. Are certain industries more likely to be targets of enforcement?**

Yes, the government has always believed that employers in the construction, agriculture, hospitality, garment, and food processing industries employ higher percentages of foreign and illegal workers. Renewed enforcement efforts will most likely focus first on those industries, as well as employers performing work related to national security or critical infrastructure.

**6. Will employers be liable for contractors and staffing company employees?**

As a general rule, employers should not be liable for contractor compliance. Beware of situations where the employer may be the "statutory" or "legal" employer despite efforts to make workers "employees" of another entity. IRCA essentially adopts the common law "right of control" test in determining whether a worker is an employee or a contract worker. Employers that knowingly steer illegal aliens to contractors because they can't be hired directly face knowing employment liability and possible criminal sanctions. In May 2006, ICE conducted a raid upon Fischer Homes, arresting four company managers and charging them with harboring illegal aliens who were actually employed by a contractor. In this case, the company managers had actual knowledge that the workers were illegal workers, yet the company managers permitted those workers to continue working on company projects. As a result, if an employer acquires actual knowledge that a contractor's employee is illegal, the employer must insist that the contractor remove the worker from the employer's property.

In addition, under the rule that will require certain federal contractors and subcontractors to enroll in E-Verify, the federal contractor will be responsible for ensuring that its subcontractors comply with the requirement.

**7. What should employers do now?**

Employers should review their hiring and enrollment procedures to make certain they are completing I-9 forms correctly and timely. We also recommend that employers review the status of I-9 compliance and conduct self-audits to ensure that the forms are properly completed.

**8. How can Littler Mendelson help employers?**

The attorneys in our global corporate migration practice group can advise employers on the need to confirm their compliance status. We can also answer questions about corrections to forms, re-verification obligations, documents that can be accepted, and procedures for putting effective compliance systems in place. In addition, we can perform random or full audits of I-9 forms. This includes review of copies, returning marked-up copies to the client, and a telephone consultation to explain problems, answer questions, and suggest solutions. Finally, we can help clients prepare for government inspections.

## STATE LAW E-VERIFY REQUIREMENTS

### Arizona

All employers in Arizona must participate in E-Verify starting January 1, 2008, for all newly-hired employees in Arizona. This is a very broad provision that applies if you are:

- ✓ Any individual or organization that:
  - transacts business in Arizona;
  - has a license issued by any agency in Arizona; and
  - employs one or more employees in Arizona.
  
- ✓ The term “employee” includes:
  - any person who provides services or labor for an employer in Arizona for wages or other remuneration; and
  - does NOT include an independent contractor.

### Colorado

Starting January 1, 2007, **all employers** in Colorado must maintain the following for new hires: Affirmation of Legal Work Status; copy of the photo identification document submitted to complete Form I-9; and copy of Permanent Resident Card or Employment Authorization Card, if submitted to complete Form I-9. You fall under the definition of “employer” in this law if you are:

- ✓ Any person or entity that transacts business in Colorado;
- ✓ And at any time employs another person to perform services of any nature;
- ✓ And has control of the payment of wages for such services or is the officer, agent, or employee of the person or entity having control of the payment of wages.

In addition, starting August 9, 2006, you must participate in E-Verify or the system administered by the State Department of Labor and Employment if you:

- ✓ Contract with the state or a political subdivision;
  - ✓ To perform work under a public contract for services.
- 
- ✓ This provision only applies to employees newly hired to perform work under the contract.

### Georgia

The following entities must participate in E-Verify:

- ✓ Starting July 1, 2007, contractors/subcontractors with the state of Georgia or a political subdivision who employ 500 or more people;
- ✓ Starting July 1, 2008, contractors/subcontractors with the state of Georgia or a political subdivision who employ 100 to 499 people;
- ✓ Starting July 1, 2009, all other contractors/subcontractors with the state of Georgia or a political subdivision who employ 500 or more people.

This applies to you if you are:

- ✓ A subcontractor, contract employee, staffing agency, or any contractor regardless of its tier;
- ✓ Who contracts for the physical performance of services within Georgia.

### **Minnesota**

Effective January 29, 2008, you must participate in E-Verify if you are:

- ✓ A vendor or subcontractor with the state in excess of \$50,000

This provision only applies:

- ✓ to new hires who will perform work under the contract for the state;
- ✓ as of the date services on behalf of the state will be performed

### **Mississippi**

The following entities must participate in E-Verify for all employees hired to perform work within the state:

- ✓ Starting July 1, 2008, employers with 250 or more employees;
- ✓ Starting July 1, 2009, employers with 100 to 249 employees;
- ✓ Starting July 1, 2010, employers with 30 to 99 employees;
- ✓ Starting July 1, 2011, employers with 1 to 29 employees.

This applies to you if you are:

- ✓ Any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi;
- ✓ A third-party employer that provides workers for another person or company (this includes, but is not limited to, leasing companies and contract employers); or
- ✓ A subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

Please note that the term “employee” is defined in the state law to include workers issued a Form 1099, which are independent contractors. However, we recommend that employers in Mississippi NOT use E-Verify for independent contractors because the rules for the E-Verify program itself use the standard definition of “employee” that excludes independent contractors. These federal rules should trump the state law.

**Missouri**

Starting January 1, 2009, the following employers must enroll in E-Verify:

- ✓ Any employer who contracts or receives a grant in excess of \$5,000 with the state or political subdivision;
- ✓ Any employer that receives a state-administered or subsidized tax credit, tax abatement or loan.
  
- ✓ These employers must also sign an affidavit for all hires working in connection with that contract

**Oklahoma**

The following employers must participate in E-Verify:

- ✓ Contractors and subcontractors who enter into a contract or subcontract;
- ✓ In connection with the physical performance of services within the state;
- ✓ Only for contracts entered into on or after July 1, 2008.

Please note that this law was scheduled to become effective Starting July 1, 2008; however, enforcement of this law is currently ENJOINED based on a lawsuit filed in the federal district court.

**Rhode Island**

Starting March 27, 2008, the following employers must participate in E-Verify:

- ✓ All persons and businesses;
- ✓ That do business with the state;
- ✓ Including grantees, contractors and their subcontractors, and vendors.

**South Carolina**

The following employers must participate in E-Verify or require the presentation of a South Carolina driver's license from new hires:

- ✓ State contractors and subcontractors with at least 500 employees must begin participation by January 1, 2009;
- ✓ State contractors and subcontractors with 100-499 employees must begin participation by July 1, 2009;
- ✓ State contractors and subcontractors with 99 or fewer employees must begin participation by January 1, 2010;
  
- ✓ All private employers of 100 employees or more must begin participation in E-Verify by July 1, 2009; and
- ✓ All private employers of less than 100 employees must begin participation in E-Verify by July 1, 2010.

**Utah**

Starting July 1, 2009, the following employers must participate in E-Verify (or a similar system such as the SSA's Social Security Number Verification Service):

- ✓ Employers who contract for the physical performance of services in Utah.

## CONTRACTOR COMPLIANCE LANGUAGE

### 1. CONTRACTOR ACKNOWLEDGES IT WILL COMPLY WITH APPLICABLE LAW

Contractor hereby acknowledges and confirms that it will comply with all applicable federal, state, or local laws, regulations, or ordinances affecting Contractor's employment of its workers or otherwise relevant to performance of the services contemplated herein.

### 2. CONTRACTOR CERTIFIES COMPLIANCE

Contractor hereby agrees that it shall certify its compliance with federal, state, and/or local laws, regulations, or ordinances affecting employment, including those related to immigration and verification of lawful status and employability, on no less than an annual basis by means of written notice to [Other Party].

### 3. CONTRACTOR CERTIFIES I-9 COMPLIANCE

Contractor specifically agrees that it will certify to [Other Party] on an annual basis in writing that Contractor is in compliance with all I-9 requirements with respect to each and every of Contractor's employees.

### 4. CONTRACTOR CERTIFIES TO ANNUAL SELF-AUDITS

Contractor agrees that it will perform self-audits of its I-9 compliance on no less than an annual basis as measured from the date of execution of this Agreement, and Contractor agrees that it shall certify in writing to [Other Party] that it has completed its I-9 self-audit and resolved any problems or deficiencies identified in the course of said audit.

### 5. CONTRACTOR AGREES TO FURNISH I-9 FORM UPON REQUEST

Contractor further agrees that upon request, it will furnish to [Other Party] the I-9 form for any employee of Contractor for whom [Other Party] requests confirmation of employment eligibility. It is expressly understood that such request by [Other Party] or compliance by Contractor shall not in any way be construed as suggesting the [Other Party] is the employer of such worker; instead, [Other Party's] request shall be viewed as only an attempt to avoid any possibility that any party might employ an illegal worker.

### 6. CONTRACTOR AGREES [OTHER PARTY] MAY REJECT CONTRACTOR'S WORKER

Contractor agrees that [Other Party] may refuse services performed by any of Contractor's workers for whom [Other Party] doubts that worker's employment eligibility or is not satisfied that Contractor's I-9 form for said worker is not properly completed.

## CONTRACTOR COMPLIANCE AGREEMENT

[Company Name] (hereafter COMPANY) operates a facility in [location]. COMPANY has contracted with [Contractor's name] (hereafter CONTRACTOR) to provide services, and in doing so, CONTRACTOR and COMPANY agree as follows:

**COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAWS:** CONTRACTOR will comply with all federal, state and municipal laws and regulations relating to the performance of its duties hereunder including, but not limited to, those laws and regulations concerning wage and hours, payment of taxes, laws prohibiting discrimination and harassment, and compliance with the requirements of the Immigration Reform and Control Act of 1986.

**ACKNOWLEDGEMENT OF COMPLIANCE:** CONTRACTOR represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act: (1) prohibiting hiring and continued employment of unauthorized aliens, (2) requiring verification and recordkeeping with respect to identity and eligibility for employment, and (3) prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status.

CONTRACTOR specifically agrees that it will certify to COMPANY on an annual basis, or as requested by COMPANY, in writing that CONTRACTOR is in compliance with all I-9 requirements with respect to each and every of CONTRACTOR's employees. By entering into this Agreement, CONTRACTOR certifies that all personnel that are being used, or will be used to perform services pursuant to this Agreement are authorized to work legally within the United States.

**MAINTENANCE OF RECORDS:** CONTRACTOR shall be responsible for the creation and retention of all employment records or documents required by law, including but not limited to:

- Time and payroll records for all employees of CONTRACTOR performing labor for COMPANY.
- Employment Eligibility Verification Form (I-9) for all CONTRACTOR employees working on COMPANY's premises. The I-9 Form shall be used by CONTRACTOR to verify that persons employed by CONTRACTOR are eligible to work in the United States.

**SELF AUDITS:** CONTRACTOR agrees that it will perform self-audits of its I-9 compliance on no less than an annual basis as measured from the date of execution of this agreement, and CONTRACTOR agrees that it shall certify in writing to COMPANY that it has completed its I-9 self-audit and resolved any problems or deficiencies identified in the course of said audit.

WORK PERFORMED BY AUTHORIZED INDIVIDUALS: CONTRACTOR will not allow any of its agents or employees to perform services on behalf of COMPANY or enter upon COMPANY's premises unless said persons are legitimately entitled to work according to the laws of the United States.

INDEMNITY: CONTRACTOR agrees to indemnify COMPANY and hold COMPANY harmless from all liability, including liability for interest and penalties, which may be assessed against COMPANY as a result of Contractor's failing to comply with

U.S. immigration laws.

COMPANY    CONTRACTOR

DATE    DATE

## IMMIGRATION OVERVIEW

**General:** There are two basic kinds of visas: temporary (or nonimmigrant) and permanent (or immigrant) visas.

**Temporary:** There are many different kinds of temporary visa categories, creating a virtual alphabet soup. There are visa categories for tourists, students, trainees, crewmen, specialty workers, investors, intra-company transfers, foreign journalists, artists, entertainers, athletes and their support staff, religious workers, NATO delegates and fiancés. For those temporary visa categories that authorize employment, such employment is employer- or job-specific. The terms and criteria for each visa category vary widely depending on the purpose of the category. For example, each category carries its own rules regarding the maximum visa validity period and the period of authorized stay each visa status will confer.

**Permanent:** Immigrant visas confer an indefinite right to live and work in the U.S. There are two major means of acquiring permanent residence, which is popularly (although inaccurately) known as "green card" status. First, certain family members of permanent residents and U.S. citizens qualify for permanent residence. Second, certain individuals sponsored through their employment qualify for permanent residence. It is also possible to acquire permanent residence after being admitted to the U.S. as a refugee or asylee. In addition, past amnesty programs have resulted in millions of illegal aliens becoming legal permanent residents. Finally, annual diversity visa lotteries award permanent residence to aliens chosen at random in the lottery process.

**Quotas:** There are limits on the number of aliens granted permanent residence each fiscal year based on the category under which they qualify. Further, the citizens of no one country may use more than 7% of the worldwide quota limit for each category. Once a country is close to reaching the 7% limit, the Department of State will establish a cut-off date for accepting additional applications.

Quotas (or "caps") also apply to certain nonimmigrant visa categories, including H-1B, H-2, and certain specialized temporary visas.

**Visas:** A visa is a travel document that permits a person to apply for admission into the U.S. at a port of entry for a defined or specified purpose (whether temporary or permanent, as described above). The period of temporary visa validity is determined by reciprocity rules, i.e., it is based upon the period granted to U.S. citizens who visit the alien's native country for analogous purposes. For example, if Country X admits U.S. citizens for temporary professional employment for three years, then citizens of Country X seeking admission to the U.S. for temporary professional purposes will be granted visas that

expire in three years. Visa reciprocity rules also govern how many times a visa stamp may be used to enter the U.S.; although most visas permit multiple entries, some countries restrict the number of entries U.S. citizens can make, and U.S. visas are similarly restricted for aliens from those countries.

Another factor to consider is that for individuals from certain countries who seek admission for tourism or brief business visits, the requirement of a valid visa stamp in the passport may be waived. This Visa Waiver Program applies to countries with established histories of temporary immigration to the United States. In addition, Canadian citizens are exempt from a visa requirement in most temporary categories but must maintain a lawful status in the United States.

**Status:** The length of temporary visa validity differs in some cases from the period of stay that the alien will be granted for each visit. The period of authorized stay is reflected on the Arrival/Departure (I-94) card the alien receives upon entry to the United States. The expiration date on the I-94 cards reflects the expiration of the person's "status" in the U.S. The status expiration date and visa expiration date may differ where visa reciprocity results in a visa valid for a period longer than U.S. law permits for status in the U.S. For example, some countries grant tourist visas for a ten year period and where this is so, the U.S. does also. But U.S. law generally limits tourists to an authorized stay of only six months. In addition, E visa and F visa holders are often affected by the disparity between visa validity and authorized stay.

**Procedure:** Visas are granted overseas at U.S. embassies and consulates. Due to visa reciprocity rules, the procedures for obtaining a visa (and the fees charged to obtain the visa stamp in the alien's passport) vary at different U.S. embassies and consulates. The alien must generally submit a visa application on Form DS-156, along with supporting documentation; and the alien will always be interviewed by a consular officer (with limited exceptions based on age and diplomatic status). The consular officer's decision not to issue a visa is generally not subject to further review. In countries with a historical pattern of visa abuse, obtaining a visa may be more difficult than in others. Moreover, the fact that U.S. Citizenship and Immigration Services has granted a petition for status is no guarantee that the consular officer will grant the individual the desired visa. As a general matter, the principal applicant must show eligibility for the desired visa status and dependents must demonstrate their appropriate relationship to the principal applicant.

## SUMMARY OF COMMON VISA CATEGORIES

**B-1/B-2:** The B-1 visa is used by visitors who enter the U.S. for business purposes such as meetings, seminars and negotiations. The government will scrutinize applicants in this category to ensure they are not truly entering the U.S. to perform productive work. The B-2 visa is a tourist visa which permits entry to the U.S. as a visitor for pleasure. Authorized stay is limited to a maximum of six months. The Visa Waiver Program permits aliens from certain countries to travel to the U.S. for B-1 or B-2 visits without first having to obtain a visa stamp at a U.S. consulate or embassy. Authorized stay is limited to a maximum of 90 days.

**E-1/E-2:** The E-1 (Treaty Trader) and the E-2 (Treaty Investor) visas permit managers, executives, and workers with essential skills to enter the U.S. to work for a company that is either engaged in substantial foreign trade or is the recipient of significant foreign investment. E visas permit authorized stay of two years each time the alien arrives in the U.S. Spouses of E visa employees may apply for a work permit.

**E-3:** The E-3 visa status allows Australian citizens who qualify as Specialty Occupation Professionals to enter the U.S. in that capacity initially granted for two years. E-3 visa stay can be renewed in two-year increments. Spouses may apply for a work permit.

**F-1/M-1:** The F-1 visa category is for foreign students in academic degree programs. The M-1 visa is for students in vocational programs. Employment authorization for students is available in limited circumstances, but normally includes a one-year period of practical training upon completion of the degree or vocational program.

**H-1B:** The H-1B visa category is for "Specialty Occupations" or professionals in jobs that require attainment of at least a baccalaureate degree in a specialized field related to the job. H-1B status is normally granted in three year increments up to a maximum of six years.

**H-2B:** The H-2B visa category is for workers who will fill truly temporary positions for which U.S. workers are unavailable. This visa requires certification from the Department of Labor that the job is temporary (i.e., less than one year and due to seasonal, intermittent, peak load or unanticipated need) and that there are no U.S. workers available to fill the job.

**J-1:** The J-1 visa category is for Exchange Visitors, which includes a wide variety of positions such as visiting scholars and lecturers, research specialists, practical trainees, au pairs, summer camp counselors, and distinguished visitors. The period of authorized stay varies depending on the category. Practical

trainees are limited to 18 months. Applicants should be aware that many individuals granted J-1 status may be subject to a requirement to return to their home country for two years. This is because this visa category contemplates "exchanges" whereby the person returns to their home country with the knowledge and skills gained during the J-1 program.

**K:** The K visa is for fiancé(e)s of U.S. citizens who can demonstrate a preexisting relationship and intent to wed within 90 days after entry. K status can also be granted to a spouse of a U.S. citizen who is awaiting consular processing for permanent residence abroad. The K visa alien will be sponsored for permanent residence soon after the marriage or as part of the arrival process.

**L-1:** The L-1 visa category is for Intra-company Transferees coming from foreign companies to a related company in the U.S. L-1A visas apply to managers and executives, and L-1B visas apply to employees with specialized knowledge within the company. L-1A status is valid for a maximum of seven years and L-1B status is valid for a maximum of five years. Spouses are eligible for a work permit.

**O-1:** The O-1 visa category is for individuals possessing Extraordinary Ability in the arts, sciences, education, or business. Individuals in O status are admitted for a maximum of three years at a time, which can be extended indefinitely.

**P:** The P visa category is used by artists, entertainers, and athletes, as well as their support staff. There are varying standards within the P category, but all are a lesser standard than "extraordinary ability." Generally, P visa status is granted in one-year increments, but can be renewed at least once.

**Q-1:** The Q-1 status is similar to the J-1 program but is intended for culturally unique exchange visitors. Sometimes called the "Disney Visa" because it is used to staff the country exhibits at Disney's EPCOT Center, the Q-1 authorizes admission to perform culturally unique activities for a period of up to 15 months.

**TN:** The Treaty NAFTA (or TN) category permits Canadian and Mexican citizens to enter the U.S. to work in defined occupations. The list of defined occupations generally reflects occupations that traditionally qualify for H-1B status under U.S. immigration law. TN status is granted in one-year increments and can be renewed at the border or by petition.