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July 2010

DHS ALLOWS EMPLOYERS TO SIGN AND STORE I-9 FORMS ELECTRONICALLY

The U.S. Department of Homeland Security (DHS) finalized a regulation that provides greater flexibility for employers to electronically sign and store I-9 forms, which are used by U.S. Immigration and Customs Enforcement (ICE) to verify employment eligibility.

Previously, employers were required to store the paper forms for later inspection by DHS. DHS adopted rules in 2006 permitting electronic storage of employment verification forms, consistent with the electronic storage rules for tax records. This rule provides additional flexibility for employers—including more options for data compression, fewer storage requirements, and more options for storage systems, among others.

For example, the final rule reaffirms that employers will not be required to use a specific technology to complete and store I-9 information, as long as the system ensures accessibility and can produce a reasonable copy of the I-9. The final rule also relaxes the audit trail requirement so that an audit trail only needs to include information on the initial completion and any subsequent modification to the I-9. In addition, the final rule states that employers may “provide or transmit a confirmation of the transaction only if an employee requests it . . . within a reasonable period of time.” Finally, the final rule removes the mandate that the electronic storage system be searchable “by any data element,” requiring only an indexing system that “permits the identification and retrieval for viewing or reproducing of relevant documents and records maintained in an electronic storage system.”

In April 2009, DHS issued updated worksite enforcement guidance to the field emphasizing ICE's major enforcement priorities—focusing on dangerous criminal aliens, and employers who knowingly cultivate illegal workplaces and exploit illegal workers. As part of this strategy, ICE identified I-9 audits as an important administrative tool in building criminal cases, issuing civil penalties, such as fines, and bringing employers into compliance with the law. Buchalter Nemer attorneys encourage all employers to take a moment to review their I-9 compliance to minimize the company's risks.

More information about I-9 forms and Employment Eligibility Verification is available on the U.S. Citizenship and Immigration Services [website](#).

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