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No “No-Match” Letters in 2007, But You’d Better Use the New I-9 Form

November 15, 2007

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No “no-matches” this year. The Social Security Administration has announced that it will not issue any no-match letters this year because of a decision preliminarily enjoining enforcement of the “Safe Harbor” regulation issued by the Department of Homeland Security.

The SSA is not likely to send out any no-match letters before the spring of 2008.

The preliminary injunction, which applies nationwide, was issued in October by Judge Charles R. Breyer of the Northern District of California in connection with a lawsuit brought jointly by the AFL-CIO, the American Civil Liberties Union, and the the National Immigration Law Center. The judge had found that the plaintiffs showed a likelihood of success on the merits of their claims that the regulation was “arbitrary and capricious.”

To read previous Constangy publications on this subject, [click here](#) and [here](#).

New I-9 must be used starting December 7. The U.S. Citizenship and Immigration Services has recently released a revised I-9 Form, Employment Eligibility Verification, for immediate use and a new M-274, Handbook for Employers, Instructions for Completing the Form I-9.

The new I-9 Form (dated June 5, 2007) can and should be used immediately. The USCIS will continue to accept the older form, dated May 31, 2005, until December 7, 2007.

The new form looks very much like prior versions, but the USCIS has attempted to make the new form and its instructions more user-friendly.

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The most significant substantive change is the removal of five acceptable documents from List A. List A documents are used for both proof of identity and proof of eligibility to work in the United States. The following documents are no longer acceptable:

- Certificate of United States Citizenship (Form N-560 or N-561)
- Certificate of Naturalization (Form N-550 or N-570)
- Form I-151, a long out-of-date version of the Alien Registration Receipt Card (“green card”)
- Unexpired Reentry Permit (Form I-327)
- Unexpired Refugee Travel Document (Form I-571).

The following List A documents are still acceptable under the new form:

- U.S. Passport (unexpired or expired)
- Unexpired Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
- Unexpired foreign passport with temporary I-551 stamp
- Unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B).

One other change has been made to the List A documents. The “unexpired foreign passport with an attached Form I-94 indicating unexpired employment authorization” has been replaced with “an unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien’s nonimmigrant status, if that status authorizes the alien to work for the employer.”

All employers are required to complete a Form I-9 for each employee hired in the United States after November 6, 1986. USCIS wants employers to start using the new form as soon as possible. According to USCIS, employers who fail to use the new Form I-9 after December 7 may incur fines and penalties.