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IMMIGRATION PRACTICE ALERT

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New I-9 Form and Procedures Take Effect April 3, 2009

The Department of Homeland Security's (DHS) Interim Final Rule regarding the Employment Eligibility Verification Form, known as Form I-9 (originally published in the *Federal Register* on December 17, 2008) is set to become effective this Friday, April 3, 2009. The Interim Final Rule is meant to improve the security of the I-9 process by making it easier for employers to verify acceptable documents and identify fraudulent documents.

All U.S. employers are required to complete a Form I-9 for *every* employee hired in order to verify that the individual is authorized for employment in the United States under the Immigration Reform and Control Act of 1986 (IRCA). **Beginning on April 3, employers' must use the new version of the Form (which contains new Lists of Acceptable Documents and some procedural changes) for all new hires and for re-verifying current employees with expiring employment authorization documentation.** Employers should not complete new Forms for existing employees who do not require re-verification. DHS has also updated its Handbook for Employers, Instructions for Completing Form I-9 (Employment Eligibility Verification Form) (Form M-274), its companion instruction booklet for the I-9 process.

The key changes for employers to be aware of with the new Form and process include:

1) All documents presented during the verification process must be valid at the time presented (this includes a U.S. passport, which previously could be expired at the time presented).
2) Employers who participate in the E-Verify Program may only accept List B documents that contain a photograph.
3) Employers may not require employees to enter their Social Security number on the form, unless the employer participates in the E-Verify Program.
4) Changes to the Form/List of Acceptable Documents:
   a) Removes three documents from List A (*USCIS no longer issues these items, and any that had been issued have now expired*):
      i) Form I-688, Temporary Resident Card
      ii) Form I-688A, Employment Authorization Card
      iii) Form I-688B, Employment Authorization Card
   b) Adds two document to List A:
      i) Foreign passports containing specially marked machine-readable visas (which include a pre-printed temporary I-551 notation)
      ii) Valid passports for certain citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI)
   c) Some technical changes have been made to the Form I-9 to streamline/clarify how it should be completed.

When the new version of the Form I-9 becomes mandatory on April 3, 2009, all previous versions become invalid. Employers who continue to use any previous edition of the Form I-9 on or after April 3 may be subject to civil money penalties. The new Form I-9 is available in English and Spanish, however, only employers in Puerto Rico may have employees complete the Spanish version for their records. Employers in all other U.S. states or

territories may use the Spanish version as a translation guide for Spanish-speaking employees, but must complete the English version for their records.

The new Form I-9 and List of Acceptable Documents is available on USCIS' website in English (http://www.uscis.gov/files/form/I-9_IFR_02-02-09.pdf) and in Spanish (http://www.uscis.gov/files/form/I-9_Spanish_Rev_01-29-09.pdf).

The new M-274, Handbook for Employers, is also available on USCIS' website (http://www.uscis.gov/files/nativedocuments/m-274_3apr09.pdf).

REMINDER TO TRAVELERS: DOCUMENT REQUIREMENTS FOR INTERNATIONAL TRAVEL

The Western Hemisphere Travel Initiative (WHTI) is a result of the Intelligence Reform and Terrorism Prevention Act of 2004, requiring all travelers to present a passport or other document that denotes identity and citizenship when entering the U.S. The goal of the initiative is to strengthen U.S. border security while facilitating entry for U.S. citizens and legitimate foreign visitors by providing standardized documentation that enables the Department of Homeland Security (DHS) to quickly and reliably identify a traveler.

On June 1, 2009, the U.S. government will implement the full requirements of the land and sea phase of WHTI. The proposed rules require most U.S. citizens entering the United States at sea or land ports of entry to have a passport, passport card or other travel document approved by the Department of Homeland Security. U.S. citizen children under the age of 16 will be able to present the original or copy of their birth certificate, or other proof of U.S. citizenship such as a naturalization certificate or citizenship card.

Currently, all persons traveling by **air** outside of the United States are required to present a passport or other valid travel document to enter or re-enter the United States and all U.S. citizens traveling by land or sea must show proof of identity and proof of U.S. citizenship when entering the United States from Canada, Mexico, Bermuda and the countries of the Caribbean (acceptable documents include: U.S. Passport Book, U.S. Passport Card or other document approved by the Department of Homeland Security.) U.S. citizens who do not have a single document verifying identity and citizenship must present both an identification and citizenship document; for example, a driver's license and a copy of a birth certificate or naturalization certificate.

More information about the WHTI and the documents required for international travel can be viewed at this website: GetYouHome.gov.

For more information regarding the information in this *Alert*, or if you require assistance with your company's immigration or employment issues, including IRCA compliance, social security mismatches, I-9s, raid planning, audits or investigations, please contact Alka Bahal at 973.994.7800 (immigration@foxrothschild.com) or any member of our Immigration Practice or Labor & Employment Department. Visit us on the web at www.foxrothschild.com.

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