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NEW FORM I-9 IS IMMINENT

The Department of Homeland Security (“DHS”) has reported that publication of a new Form I-9 and employer handbook is imminent, perhaps even as soon as November 5, 2007. Although the original plan had been to publish a new regulation first and then issue the new Form I-9, the new Form I-9 will be based on the regulations published in 1997-98. The DHS still intends to publish a new regulation, with an accompanying new Form I-9, in 2008.

DHS 1997-98 Regulations

In an effort to reduce the use of fraudulent documents, the 1997-98 regulations reduced the number and type of documents acceptable for Form I-9 employment verification purposes. The regulations eliminated several List A documents considered acceptable to establish both employment authorization and identity, including Certificates of U.S. Citizenship, Certificates of Naturalization, unexpired Re-entry Permits, unexpired Refugee Travel Documents, and Form I-151 Alien Registration Receipt Cards or Permanent Residence Cards. Accordingly, only those documents identified below will be listed in the new Form I-9 as an acceptable List A document to establish both employment authorization and identity:

1. United States Passport (unexpired or expired);
2. Alien Registration Receipt Card or Permanent Residence Card – Form I-551;
3. An unexpired foreign passport that contains an unexpired temporary I-551 stamp;
4. An unexpired Employment Authorization Document issued by the Immigration and Naturalization Service which contains a photograph – Form I-766 (added by the 1997 regulation), Form I-688, Form I-688A, or Form I-688B; or
5. In the case of non-immigrant aliens authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien’s non-immigrant status, so 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 I-94.

Like the current one, the new Form I-9 will be available for download and copying at no cost on the USCIS website – www.uscis.gov/I-9.

If you have any questions about this or any other employment-related issue, please contact your Vorys lawyer.

This alert contains information necessarily of such a general nature that it cannot be regarded as legal advice. Vorys, Sater, Seymour and Pease LLP is available to provide additional information and to discuss matters contained herein as they may apply to specific situations. ©2007, Vorys, Sater, Seymour and Pease LLP. For additional information, visit www.vorys.com.