EMPLOYMENT
& LABOR LAW

ADVICE
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LANDEGGER | BARON | LAVENANT
A LAW CORPORATION

GETTING READY FOR 2008

New Laws For The New Year

Employment Law Workshop

By

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NEW LAWS FOR 2008

WAGE & HOUR

Once again, wage and hour employment litigation appears to be one of the most attractive lawsuits for employees and plaintiffs' counsel. The legislature and courts have done little to stem the tide of expensive employee lawsuits. Meal and rest period violations will remain one of the most heavily litigated claims in the coming years. Here is a summary of key laws and employment decisions to keep in mind for 2008.

California Minimum Wage (AB 1835)

Increases California's minimum hourly wage and exempt salary standards for all California employers. This law increases the minimum wage to $8.00 per hour, effective on and after January 1, 2008. This is the second year of the two-step wage increase that brought the minimum up from $6.75 to $8.00 in a fifteen-month period.

In addition to the direct financial impact that the increase in minimum wage will have on businesses employing individuals at or near the minimum wage, the increase will have significant impact on other areas.

1. Most importantly, after January 1, 2008, employees who are classified as exempt employees must earn twice the minimum wage rate to satisfy the "salary test" of the exempt status analysis for the three major exemptions. This amounts to a minimum annual salary of $33,280.00, or $2,773.34 per month/$640.00 per week.

2. In certain industries, commissioned salespersons may be exempt from overtime if they receive at least one and one-half times the minimum wage for all hours worked and one-half of the total compensation is paid through commissions. Accordingly, commissioned salespeople must earn no less than $12.00 per hour in addition to satisfying the other terms and conditions of the exemption.

3. Some employers require that an employee maintain his or her own hand tools and equipment required by the job. Most employers do not know that if the employee does not earn twice the minimum wage, the employer must pay for the costs of the tools and equipment and cannot shift the burden to the employee. Thus, in order for an employee to be entitled to be reimbursed for the tools and equipment, the employee must earn less than $16.00 per hour after January 1st.

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Federal Minimum Wage

On May 25, 2007, President Bush signed a spending bill that amended the FLSA to increase the federal minimum wage in three steps: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009.

Since most California employers are subject to the higher state minimum wage rates discussed above, the federal increase has little impact. However, since there is a poster that must be displayed advising all employees of the federal minimum wage, employers should have the new poster displayed in the work area.

Computer-related Occupations

In 2000, the legislature created an additional overtime exemption for certain employees in computer-related occupations. At that time, in order to be exempt the individual had to earn at least $41.00 per hour, in addition to engaging in several other duties related to the software profession. The original law required that the hourly rate had to be increased every year in a percentage equivalent to the Consumer Price Index. Last year, the employee had to earn an hourly rate of at least $49.77 per hour. This resulted in an annualized salary of $103,521.60, difficult for most employers to pay.

In a rare move, the legislature amended the law to lowering the compensation requirement for the position to reflect a more realistic pay range. Effective January 1, 2008, the required hourly rate for employees classified under this exemption is an hourly rate of $36.00 per hour for all hours worked.

Meal & Rest Periods

This area of Wage & Hour law has been one of the most attractive claims for plaintiffs' attorneys to file against unwary employers. The California Labor Code and the Industrial Welfare Commission Wage Orders are so confusing that a large majority of employers are not in 100% compliance. A minor technical violation can result in hundreds of thousands of dollars in potential exposure for small to medium size employers.

Employees in California are entitled to a minimum of a thirty (30) minute duty-free meal period if they work for a period of five (5) hours or more. If an employee's total work period is no more than six (6) hours, the employer and employee may mutually agree to waive the meal period requirement. A second meal period is required if an employee works more than ten (10) hours per day unless the work period is less than twelve (12) hours, then the second meal period may be waived by mutual consent, but only if the first meal period has not been waived.

The Labor Commissioner has interpreted the above meal period rules to provide that an employer who does not **force** an employee to take a lunch, does not provide a lunch by the end of the fifth hour or does not provide a lunch for every five hour work period violates the law, even if the employee subsequently gets a meal period of thirty (30) minutes or more. The Labor Commissioner goes so far as to impose a penalty if the meal period started 1 minute after the end of the fifth hour – an unduly harsh approach. In addition, if an employee clocked in after taking a meal period that was recorded as 29 minutes or less on the time card, the employer is deemed to have violated the law and is required to pay a penalty of one hour of additional compensation. In essence, the Labor Commissioner's policy forces employers to babysit its employees.

This one (1) additional hour of pay must be paid at the employee's regular rate of pay. This additional hour is not counted for purposes of overtime calculations.

A more lenient standard has been required by the California Labor Commissioner with respect to rest periods. Pursuant to this agency's interpretation, an employer is only required to "permit and authorize" each employee to take at least a ten (10) minute **paid** break for each four (4) hours worked (or major fraction thereof). If an employee works three and one-half (3 ½) hours or less in a workday, it is not required that a break be given to that employee. Like the violations for missed meal periods, if an employer fails to provide a rest period, the employer must pay one (1) additional hour of pay at the employee's regular rate.

Due to the difficulty in controlling the exact time that an employee took a meal period, or that a rest period was actually observed by the employee, plaintiff's attorneys and aggressive Deputy Labor Commissioners have been seeking massive penalties against innocent California employers. For attorneys, the incentive for filing a claim is the prospect of earning six-figure attorneys' fees for minor violations on a massive scale. As an example, an employer with 50 employees who miss only one week's (5 days) worth of meal breaks can be faced with a claim for $2,500 (50 employees x 5 days x $10.00 hour). While this number is not significantly burdensome, the same employer may face bankruptcy, if the employer does not have the proper documentation to establish that it met its obligation for 52 weeks for three years. Now the exposure can jump to a staggering amount of $390,000, exclusive of attorneys fees which can range anywhere from $25,000 for a small claim, to over half a million dollars for a six to seven figure award.

Also, since the California Supreme Court decided the *Murphy v. Kenneth Cole* decision in early 2007, an employee who did not receive all of his or her compensation for meal or rest period violations is entitled to waiting time penalties in an amount equal to thirty (30) days' wages. As an example, an employee who failed to record on his or her time sheet that he/she took a lunch, and was not provided the "meal period" penalty before he/she was separated, could be entitled to $2,400 (assuming a $10.00 an hour rate) for a simple $10.00 mistake which is hardly a fair proposition.

Some recent cases may stem the tide of frivolous class action litigation for technical violations of the meal and rest period provisions.

***Brinker Restaurant Corporation v. Superior Court*:** In this unpublished decision, an appellate court decided that Chili's, Macaroni Grill, and Little Italy did not violate the state's meal period provisions when the employees were directed to take a meal period early in their shift. The early lunch break resulted in the employee working for approximately five to six hours more, contrary to the Labor Commissioner's interpretation of state law. The Court held that there is no specific requirement that a meal period be taken close to the fifth hour, or for every five (5) hours of work. Thus, employers do retain flexibility in scheduling lunches well before the fifth hour, as well as arguably after the fifth hour. What is left to be decided is whether an employer has to "ensure" that an employee takes a lunch at all. The Court hinted that an employee may only have to permit and authorize an employee to take a meal period, similar to the rest period rules.

White v. Starbucks: This federal court decision issued in July, 2007 appears to answer the question left open by the *Brinker* decision. In this case, a judge in Northern California ruled that if the question of ensuring that a lunch was taken by an employer were to be decided by the California Supreme Court, the Supreme Court would rule that an employer only has to offer an employee a meal break and not forced to forego his lunch. This decision is binding in the Northern District of California, but only in federal court. Since most California laws are more favorable to employees, and employees' attorneys, most cases are filed in state court, following state precedent.

Mileage Reimbursement

California Labor Code, Section 2802 has always required that employees be indemnified for any expenses incurred as a result of a discharge of their duties. The California Labor Commissioner has historically taken the position that payment of the IRS reimbursement rate will be prima facie evidence that the employee has been properly reimbursed for utilizing his own vehicle pursuant to Labor Code, Section 2802.

If an employer allows or knows that an employee is utilizing his or her personal vehicle for business, the employee must be reimbursed for that expense. The amount of reimbursement for these business trips has varied depending on the vehicle, insurance rates for the geographical area, and gas prices.

Beginning Jan. 1, 2008, the standard mileage rates for the use of a car (including vans, pickups or panel trucks) will be:

1. 50.5 cents per mile for business miles driven;

2. 19 cents per mile driven for medical or moving purposes; and

3. 14 cents per mile driven in service of charitable organizations.

The new rate for business miles compares to a rate of 48.5 cents per mile for 2007. The new rate for medical and moving purposes compares to 20 cents in 2007. The rate for miles driven in service of charitable organizations has remained the same.

The standard mileage rate for business is based on an annual study of the fixed and variable costs of operating an automobile; the standard rate for medical and moving purposes is based on the variable costs as determined by the same study. Runzheimer International, an independent contractor, conducted the study for the IRS.

While most employers have elected to follow the IRS rate, some employers have taken a different approach on reimbursement. This includes either a flat fee for business trip or a periodic auto allowance.

In an important decision reached last year by the California Supreme Court, in *Gattuso v. Harte-Hanke Shoppers, Inc.* ruled that an employer does not violate Labor Code section 2802 by reimbursing its employees for all their business expenses with increased wages or commissions instead of providing a separate reimbursement based on the exact number of mileages traveled.

In *Gattuso v. Harte-Hanke Shoppers, Inc.*, the employer employed two types of salespersons: inside and outside. The outside salespeople were compensated at a higher pay rate to reimburse the employees for their vehicle costs and other business expenses. The plaintiffs argued that the employer violated Labor Code section 2802 by reimbursing their employees with additional salary. They argued that there had to be a "correlation" between the employee business expenses and the reimbursement.

The Supreme Court ruled that there is nothing in the language of Labor Code section 2802 that prohibits an employer from paying additional income in order to reimburse employees for their business expenses. The Court also held that the employer is complying with section 2802 so long as there is a formula that determines what portion of the income is intended to reimburse the employee for their business expenses. However, the employer must take into consideration the employee's tax obligations on the additional income when determining whether the remaining compensation reimburses the employee in full for all the incurred business expenses.

The number of class actions seeking reimbursement for mileage expenses was rapidly growing prior to the *Gattuso* decision. Employers who pay a "per mile", "per trip" have a high likelihood of succeeding on a §2802 claim. Employees who utilize a Gattuso-like approach should also feel confident that they could defend this type of claim if they have done their research on the costs of operating a vehicle in California.

GENERAL EMPLOYMENT PRACTICES

Immigration

Immigration reform was a hot topic in 2007. In an election year it is suspected that immigration will once again be a popular discussion. Unfortunately, most of the burden on enforcing immigration laws has been shouldered by the business community. This is demonstrated by the contested legislation that sought to have employer's terminate employees who had validly completed an I-9 – which is administered by the Department of Homeland Security, but were advised the employees did not have sufficient or questionable documentation. This documentation would come into question, not be a raid or inquiry from the Customs and Immigration Service ("USCIS"), but by the Social Security Administration. This would in effect, make the employer the law enforcement agency.

The status of the "no match" letters is in limbo at this time. It is uncertain whether anything political pressures will force the issue before November, 2008.

One significant issue concerning immigration was formalized this year, after a long anticipated wait. On November 26, 2007, the USCIS issued a new I-9 based on revisions made in 2005. The new I-9 is available in English and Spanish. The new forms are attached and also available online in .pdf format at www.uscis.gov

Please note the following changes to the Form I-9 process:

- As we have been telling our clients since mid-2005, five (5) documents have been removed from List A of the List of Acceptable Documents:

  Certificate of U.S. Citizenship (Form N-560 or N-561)
  Certificate of Naturalization (Form N-550 or N-570)
  Alien Registration Receipt Card (I-151)
  Unexpired Reentry Permit (Form I-327)
  Unexpired Refugee Travel Document (Form I-571)

- One document was added to List A of the List of Acceptable Documents:

  Unexpired Employment Authorization Document (I-766)

- All Employment Authorization Documents with photographs have been consolidated as one item on List A:

  I-688, I-688A, I-688B, I-766

- Instructions regarding Section 1 of the Form I-9 now indicate that the employee is not obliged to provide his or her Social Security number in Section 1 of the Form I-9, unless he or she is employed by an employer who participates in E-Verify.

- Employers may now sign and retain Forms I-9 electronically.

- Failure to use the new Form I-9 may cause employers to incur penalties.

- **Note: The Spanish version of Form I-9 may only be completed by employers and employees in Puerto Rico ONLY. Spanish-speaking employers and employees in the 50 states and other U.S. territories may print this form for their reference, but may only complete the form in English to meet employment eligibility verification requirements.**

SSN Disclosure Law

The state SSN disclosure law prohibits the use of SSN in a manner that can be viewed by the public. Effective January 1, 2008, employers must use an employee identification number that is not the employees SSN or use only the last four digits of that employee's SSN. In addition, the law prohibits a person or entity from any of the following:

(1) Publicly displaying an individual's social security number.

(2) Printing an individual's social security number on any card required for the individual to access products or services provided by the person or entity.

(3) Requiring an individual to transmit his or her social security number over the Internet, unless the connection is secure or the social security number is encrypted.

(4) Requiring an individual to use his or her social security number to access an Internet Website, unless a password or personal identification number is also required to access that Website.

(5) Print an individual's social security number on any materials that are mailed to the individual, unless required by state or federal law.

Military Spouse Leave (AB 392)

This bill was signed by Governor Schwarzenegger on October 9, 2007 and takes effect immediately. This new law states that California businesses employing 25 or more people must give up to 10 unpaid days off to any "qualified" employee whose spouse is on leave from military deployment. Under AB 392, a qualified employee is one who works more than 20 hours per week whose spouse is a member of the Armed Forces, National Guard or Reserves who has been deployed during a period of military conflict.

Employees who desire to take time off pursuant to this policy must provide a copy of the official notice that the qualified member will be on leave to their supervisor and the Human Resources Department no later than two (2) business days after the employee receives the official notice.

NOTE: California law now requires that any leave or benefit available to an opposite sex spouse be made available to any registered domestic partner.

DISCRIMINATION & HARASSMENT

Sexual Harassment Regulations

For the past two years, our firm has been providing you information and updates on the requirements of AB 1825 (Required Sexual Harassment Avoidance Training) and how it impacts your business. We also have been giving you updates on how the definition of sexual harassment has been expanded to create additional basis for liability for supervisors and organizations alike. Our office has had representatives involved in the development of the regulations interpreting AB 1825 so that the requirements of training are as clear and concise as the law can be.

On August 17, 2007, the Sexual Harassment Training and Education Regulations became effective. Here are a few of the key provisions:

- The definition of employee is rather broad and includes, full, part time and temporary workers. The "employee count should also include any independent contractors that are providing services to the covered employer. Thus you may have only ten direct hires, but if you contract with somebody with forty or more employees, you now meet the threshold required for mandatory training. There is no requirement that the fifty employees or contractors work at the same location or all work or reside in California.

- The next main topic of the training regulations actually concerns who must conduct the training. The individual or individuals leading the training seminar must be a trainer or educator who has legal education coupled with practical experience with harassment, discrimination and retaliation prevention. Based on these new regulations it is unlikely that most HR personnel, HR consultants, general counsel or corporate attorneys have the requisite knowledge and experience on how to comply with the training requirements under AB 1825. The regulations set forth that it is the employer's burden to establish that the training material as well as the individual instructor meets the criteria of the regulations. If the individual does not meet the regulations requirements, then the training is ineffective and meaningless. In addition, it has been our experience that plaintiff's counsel will use the instructor's lack of knowledge in sexual harassment training in its prosecution of sexual harassment cases. In other words the failure to use a qualified trainer will be a focus of the prosecution of plaintiff's attempt to hold that the employer does not treat its obligation to train its employees in sexual harassment avoidance seriously.

■ Over the past year or so, companies and law firms have been developing training programs involving PowerPoint presentations, DVD presentations, or internet or e-learning situations. The regulations do address the type of training that is appropriate and although e-learning and "webinars" are permissible under the regulations, the documentation and burden of establishing that these training methods are adequate, will be borne by the employer.

■ The regulations required that training is to be conducted every two years for supervisors. New supervisors must be trained within six months of hire or promotion. The original deadline for training occurred on December 31, 2005. Most of you were proactive in your training and completed this training prior to December 31, 2005. The most recent deadline for training occurred on December 31, 2007. If you have not completed your training, it is important to comply as soon as possible.

■ One question that was answered by the regulations concerned supervisors who transferred organizations in between the training year and whether that individual can transfer their old certificate to the new employer. The regulations hold that the supervisor who had training at a prior organization can transfer their certificate. However, the burden of establishing that the prior training complied with the regulations shall be on the current employer.

Recent Discrimination & Harassment Decisions

In Myers v. Trendwest Resorts, Inc., a female employee brought an action alleging sexual harassment under the California Fair Employment and Housing Act ("FEHA") against her former employer, Trendwest Resorts. She claimed that her male supervisor harassed her through unwanted sexual advances, comments, and nonconsensual physical contact, most of which occurred outside of the office while on business trips.

The defendants moved for summary judgment based on the fact that the supervisor's actions were outside the scope of employment and therefore were unforeseeable to Trendwest. The trial court granted the motion and awarded attorneys fees to the defendant in the amount of $40,000.

The court of appeals reversed in part the trial courts summary judgment ruling. The main issue was whether the male employee was acting as a supervisor during the time of the harassment. The Court of Appeals concluded that unless the harassment resulted "from a completely private relationship unconnected with the employment" the employer is strictly liable for a supervisor's actions. Although the harassment took place outside the office, the trips were in direct connection with the employment, since during the time of the harassment there was no personal relationship.

Different Benefits Violate Labor Code Section 132a In a recent case, an employee for the City of Santa Barbara, sustained industrial injuries and filed a worker's compensation claim. The city allowed employees with non-industrial injuries to use sick time to attend to medical appointments. Since the employee's injuries occurred as a result of his employment, he was forced by the city to use vacation time rather than sick leave to obtain medical care for those injuries.

The employee filed a claim against the City alleging discrimination in violation of California Labor Code Section 132a by forcing him to use vacation time rather than sick leave. Labor Code Section 132(a) says that "it is declared a policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment."

The Workers' Compensation Appeals Board found in favor of the injured employee since he was not provided the same benefits as employees with non-industrial injuries.

Supervisors can be personally liable for retaliation. In a clarification of the FEHA, the Court of Appeal decided Taylor v. City of Los Angeles. In this case, a city employee had alleged that he was retaliated against by a supervisor after he opposed race discrimination against a subordinate employee. Taylor accused his superior of terminating that subordinate employee without informing him first, denying a transfer, stripping his supervisory position, and not allowing him to seek promotional opportunities. He stated a claim for retaliation under both the "materiality test" and "deterrence test".

The "materiality test" is an adverse employment action that materially affects the terms and conditions of employment. The "deterrence test" is a retaliatory action that doesn't necessarily affect the terms and conditions of employment but discourages a reasonable employee from making or supporting a charge of discrimination.

The City of Los Angeles relied on the case Reno v. Baird in order to bar the supervisor from being held personal liable for retaliation. In that case the court held that a supervisor may be individually sued for discrimination and stated nothing about retaliation. The court of appeals determined that a supervisor is not protected from liability under the governmental immunity provisions of state law and that under the FEHA a supervisor can be held personally liable for retaliation.

RECOMMENDED EMPLOYMENT PRACTICES

Cell Phones (SB 1613)

This law provides that, effective July 1, 2008, it is illegal to drive a motor vehicle while using a wireless telephone, unless that telephone is designed and configured to allow hands-free listening and talking operation, and is used in that manner while driving. This offense would be punishable by a fine of $20 for a first offense and $50 for each subsequent offense. This does not apply to a person who is using the cellular telephone to contact a law enforcement agency or other public safety entity for emergency purposes, or an emergency services professional while he or she operates an authorized emergency vehicle.

Until July 1, 2011, this prohibition does not apply to a person driving a motor truck or truck tractor, an agricultural vehicle, tow truck, or a commercial vehicle, when using a digital 2-way radio service that utilizes a wireless telephone that operates by depressing a push-to-talk feature as long as it does not require immediate proximity to the user's ear. The law does not apply to a person driving a school bus or transit vehicle that is subject to certain existing wireless telephone usage restrictions, or to a person while driving a motor vehicle on private property.

As a companion law to SB 1613, SB 33 (Simitian) has also passed, This law makes it illegal for a minor to use a wireless telephone (even if it is hands-free) or other mobile service device (any device used to communicate electronically), while operating a vehicle. The law provides an exemption for emergency purposes. This law goes into effect July 1, 2008

It highly recommended that employers considering purchasing hands-free devices to accompany company-issued mobile phones. Prudent employers should also implement a mobile phone usage policy immediately.

Smoking In a Car (SB 7)

Effective January 1, 2008, SB 7 now prohibits anyone in a vehicle from smoking when a minor is present. This law applies whether the vehicle is stopped or moving. This is a secondary violation. An officer cannot stop a driver to determine if they are in violation of this law.

OMB No. 1615-0047; Expires 06/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Instructions

Please 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 U.S.) 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 eligible 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.

What Is the Purpose of This Form?

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

When Should the Form I-9 Be Used?

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

Filling Out the Form I-9

Section 1, Employee: This part of the form must be completed at 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.**

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/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 eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, **Section 2** must be completed at the time employment begins. **Employers must record:**

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. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the Form I-9. **However, employers are still responsible for completing and retaining the Form I-9.**

Section 3, Updating and Reverification: Employers must complete **Section 3** when updating and/or reverifying the Form I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in **Section 1**. 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 (3) years of the date this form was originally completed and the employee is still eligible 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 (3) 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 that the employee is authorized to work in the U.S. (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.

What Is the Filing Fee?

There is no associated filing fee for completing the Form I-9. This form is not filed with USCIS or any government agency. The 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, call our toll-free number at **1-800-870-3676**. Individuals can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at **www.uscis.gov**.

Photocopying and Retaining the 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 Forms I-9 for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

The 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 officials of U.S. Immigration and Customs Enforcement, 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.

Paperwork Reduction Act

We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: **1)** learning about this form, and completing the form, 9 minutes; **2)** assembling and filing (recordkeeping) the form, 3 minutes, for an average of 12 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0047.

OMB No. 1615-0047; Expires 06/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Please 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 eligible 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 or national of the United States
- ☐ A lawful permanent resident (Alien #) A _____
- ☐ An alien authorized to work until _____

(Alien # or Admission #) _____

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

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:					
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 eligible 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)*

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: _____ Document #: _____ Expiration Date (if any): _____

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible 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)*

LISTS OF ACCEPTABLE DOCUMENTS

LIST A **Documents that Establish Both Identity and Employment Eligibility**	OR	LIST B **Documents that Establish Identity**	AND	LIST C **Documents that Establish Employment Eligibility**
1. U.S. Passport (unexpired or expired)		**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.** U.S. Social Security card issued by the Social Security Administration *(other than a card stating it is not valid for employment)*
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		**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 or Form DS-1350)*
3. An unexpired foreign passport with a temporary I-551 stamp		**3.** School ID card with a photograph		**3.** Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)		**4.** Voter's registration card		**4.** Native American tribal document
		5. U.S. Military card or draft record		**5.** U.S. Citizen ID Card *(Form I-197)*
5. 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		**6.** Military dependent's ID card		**6.** ID Card for use of Resident Citizen in the United States *(Form I-179)*
		7. U.S. Coast Guard Merchant Mariner Card		
		8. Native American tribal document		**7.** Unexpired employment authorization document issued by DHS *(other than those listed under List A)*
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		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)

OMB No. 1615-0047; Expires 06/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Instrucciones

Lea cuidadosamente las instrucciones antes de llenar este formulario. (Para uso únicamente en Puerto Rico.)

Notificación Anti-Discriminación. Es ilegal discriminar a cualquier individuo (con excepción de un extranjero no autorizado a trabajar en los E.U.A.) al contratar, desemplear, reclutar o contratar por honorarios debido al origen del individuo o su ciudadanía. Es ilegal discriminar a cualquier individuo elegible para trabajar. Los empleadores **NO PUEDEN** especificar que documento(s) aceptarán de un empleado. El negarse a emplear a un individuo porque la fecha de vencimiento de los documentos presentados está cercana puede también constituirse como una discriminación ilegal.

¿Cuál es el propósito de este formulario?

El propósito de este formulario es documentar que cada empleado nuevo (ciudadano o no ciudadano) contratado después del 6 de noviembre de 1986 está autorizado a trabajar en los Estados Unidos.

¿Cuándo debe ser utilizado el Formulario I-9?

Todos los empleados, ciudadanos y no ciudadanos, contratados después del 6 de noviembre de 1986 y que estén trabajando en los Estados Unidos deben llenar el Formulario I-9.

Como Llenar el Formulario I-9

Sección 1, Empleado: Esta parte del formulario debe llenarse en el momento de la contratación, que generalmente es el inicio del empleo. Proveer el número de Seguro Social es voluntario, a excepción de aquellos empleados que han sido contratados por empleadores que participan en el Programa Electrónico de Verificación de la Elegibilidad de Empleo de USCIS. **El empleador debe asegurarse que la Sección 1 se llene puntual y correctamente.**

Certificación del Traductor o Tercero. La certificación del traductor o tercero debe llenarse si la **Sección 1** es preparada por cualquier persona que no sea el empleado. Un traductor o tercero sólo puede utilizarse cuando el empleado no pueda llenar la **Sección 1** por sí mismo. Sin embargo, el empleado debe firmar la **Sección 1** personalmente.

Sección 2, Empleador: Con la finalidad de llenar este formulario, el término "empleador" se refiere a todos los empleadores incluyendo los reclutadores y los contratistas por honorarios tales como las asociaciones agrícolas, empleadores agrícolas o los contratistas de trabajo agrícola.

Los empleadores deben llenar la **Sección 2** examinando las pruebas de identidad y elegibilidad de empleo dentro de los tres (3) dias hábiles a partir de la fecha del inicio de empleo. Si el empleado está autorizado para trabajar, pero no puede presentar los documentos requeridos dentro de los tres (3) días hábiles, debe presentar un recibo de esta solicitud dentro de tres (3) días hábiles, y los documentos requeridos en un periodo de noventa (90) días. Sin embargo, si los empleadores contratan a individuos para trabajar por menos de 3 días hábiles, debe llenarse la **Sección 2** en el momento en el que se inicie el empleo. **Los empleadores deben anotar:**

1. Título del documento.
2. Autoridad que expide el documento.
3. Número de documento.
4. Fecha de vencimiento, si la hay; y
5. Fecha de comienzo del empleo.

El empleador debe firmar y colocar la fecha de la certificación. El empleado debe presentar sus documentos originales. El empleador puede, aunque no está obligado, a fotocopiar los documentos presentados. La(s) fotocopia(s) sólo puede(n) utilizarse para la verificación del proceso y deben guardarse con el Formulario I-9. **Sin embargo, los empleadores son los responsables de llenar y guardar el Formulario I-9.**

Sección 3, Actualización y nueva verificación: Los empleadores deben llenar la **Sección 3** cuando se esté actualizando y, o verificando el Formulario I-9. Los empleadores deben verificar de nuevo la elegibilidad de empleo de los empleados para trabajar antes de la fecha de vencimiento anotada en la **Sección 1**. Los empleadores **NO PUEDEN** especificar que documento(s) aceptarán del empleado:

A. Si el nombre de un empleado ha cambiado en el momento en que este formulario está siendo actualizado o que se realiza la nueva verificación, llene la casilla A.

B. Si un empleado es contratado nuevamente dentro de tres (3) años de la fecha original del formulario, asimismo el empleado sigue siendo elegible para ser contratado bajo las mismas condiciones previamente señaladas en este formulario (actualización), llene la casilla B y la casilla de la firma.

C. Si un empleado es contratado nuevamente dentro de tres (3) años de la fecha original de este formulario y la autorización del empleador ha expirado o si la autorización del empleador actual está por vencer (actualización), llene la casilla B y:

1. Compruebe que cualquier documento que refleje que el empleado está autorizado para trabajar en los E.U.A. (Ver lista A o C);
2. Anote el título del documento, número del documento y la fecha de vencimiento (si la hay) en la casilla C, y
3. Llene la casilla de la firma.

¿Cuál es el cargo por tramitación?

No hay ningún cargo por concepto de tramitación del Formulario I-9. Este formulario no es tramitado por la USCIS o por ninguna otra agencia del gobierno. El empleador debe guardar el Formulario I-9 y tenerlo disponible para que pueda ser inspeccionado por funcionarios del gobierno de los E.U.A., como especifica el Aviso de la Ley de Privacidad más adelante.

Formularios e Información de USCIS

Para encargar formularios, por favor llame al **1-800-870- 3676**. Si desea conseguir información sobre los formularios de USCIS o sobre las leyes inmigratorias, procedimientos y normas de inmigración, llame a nuestro Centro de Servicio Nacional al Cliente al **1-800-375-5283** o visite nuestra página web: **www.uscis.gov.**

Fotocopia y Conservación del Formulario I-9

Una copia en blanco del Formulario I-9 puede ser reproducida, siempre y cuando ambos lados sean copiados. Las instrucciones deben estar disponibles a todo empleado que llene este formulario. Los empleadores deben conservar los formularios I-9 completos por tres (3) años después de la fecha inicial de empleo o un año después de la fecha en que el empleo termine, lo que sea más tarde.

El Formulario I-9 puede ser firmado y guardado electrónicamente, según lo autorizado en la reglamentación 8 CFR § 274a.2 del Departamento de Seguridad Nacional.

Aviso de la Ley de Privacidad

La autoridad que recopila esta información es la Ley de Reforma y Control de Inmigración de1986, Pub. L. 99-603 (8 USC 1324a).

Esta información es para que los empleadores verifiquen la elegibilidad de los individuos a contratar para evitar contrataciones ilícitas, reclutamientos o contratados por honorarios, de extranjeros no autorizados a trabajar en los Estados Unidos.

Esta información será usada por los empleadores como base de su registro para determinar la elegibilidad de un empleado para trabajar en los Estados Unidos. El formulario será guardado por el empleador y se hará disponible para la inspección de oficiales del Departamento de Inmigración y Aduanas de los E.U.A., el Departamento de Trabajo y la Oficina del Consejo para Inmigración y Prácticas de Empleo Injustas.

La aportación de la información requerida en este formulario es voluntaria. Sin embargo, un individuo no puede empezar su empleo sin antes llenar este formulario, ya que el empleador está sujeto a sanciones civiles o criminales si no cumple con la Ley de Control y Reforma de Inmigración de 1986.

Ley de Reducción de Trámites

Intentamos crear formularios e instrucciones que sean precisos, fáciles de entender y que le impongan la menor carga posible cuando nos provee información. A menudo esto es difícil porque algunas leyes de inmigración son muy complejas. Por consiguiente, la carga de trámites para la recopilación de información es calculada de la siguiente manera: 1) informarse acerca de este formulario y como llenar el formulario 10 minutos; 2) juntar y archivar (registros) el formulario, 2 minutos, lo cual da un promedio de 15 minutos por respuesta. Si usted tiene algún comentario acerca de precisión de esta estimación o sugerencias para hacer este formulario más simple, puede escribir a: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0047.

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Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Por favor, lea cuidadosamente las instrucciones antes de llenar este formulario. Las instrucciones deben estar disponibles cuando se llene este documento.

AVISO ANTI-DISCRIMINACIÓN: Es ilegal discriminar a cualquier individuo elegible para trabajar. Los empleadores NO PUEDEN especificar qué documento(s) aceptarán de un empleado. La negativa a emplear a una persona debido a una fecha futura de vencimiento de los documentos presentados puede constituir discriminación ilegal.

Sección 1. Información y Verificación del Empleado. El formulario deber ser llenado y firmado por el empleado en el momento en el que comience a trabajar.

Nombre en Letras de Imprenta: Apellido	Nombre	Inicial del Segundo Nombre	Nombre de Soltero(a)

Dirección *(nombre y número de la calle)*	Nº de Apto.	Fecha de nacimiento *(mes/día/año)*

Ciudad	Estado	Código Postal	Nº de Seguro Social

Estoy informado que la ley Federal estipula el encarcelamiento y/o la sanción por declaraciones falsas o por el uso de documentos falsos al llenar este formulario.

Certifico, bajo pena de perjurio, que soy (marque uno de los siguientes):
- ☐ Ciudadano o natural de los Estados Unidos
- ☐ Residente legal permanente (Nº de Extranjero) A _____
- ☐ Extranjero autorizado a trabajar hasta el _____ (Nº de Extranjero o Nº de Admisión) _____

Firma del empleado	Fecha *(mes/día/año)*

Certificación del traductor y, o tercero. *(Se debe llenar y firmar si la Sección 1 la llena cualquier persona que no sea el empleado.) Certifico, bajo pena de perjurio, que he ayudado a llenar este formulario y que según mi entender, la información es verdadera y correcta.*

Firma del Traductor o Tercero	Nombre y Apellido *(en imprenta)*

Dirección: *(Nombre y Número de la Calle, Ciudad, Estado, Código Postal)*	Fecha *(mes/día/año)*

Sección 2. Revisión y Verificación del Empleador. Se debe llenar y firmar por el empleador. Verifique un documento de la lista A o un documento de la lista B y uno de la lista C, tal y como figura en la parte posterior de esta página, y anote el título, número y fecha de vencimiento, si hay alguna, del documento.

	Lista A	**O**	**Lista B**	**Y**	**Lista C**
Título del Documento:					
Autoridad que Emite el Documento:					
Nº de Documento:					
Fecha de Vencimiento *(si la hay)*:					
Nº de Documento:					
Fecha de Vencimiento *(de ser el caso)*:					

Certificación - Certifico, bajo pena de perjurio, que he verificado los documentos presentados por el empleado nombrado anteriormente; los documentos en la lista anterior aparentan ser genuinos y son referentes al empleado nombrado. La persona antes mencionada fue empleada *(mes/día/año)* _____ **y a mi mejor entender declaro que el empleado es elegible para trabajar en los E.U.A. (Las agencias de empleo del estado pueden omitir la fecha en la que el empleado fue contratado.)**

Firma del Empleado o el Representante Autorizado	Nombre y Apellido *(en letra de imprenta)*	Título

Nombre y Dirección de la Organización o Compañía *(Nombre y Número de la Calle, Ciudad, Estado, Código Postal)*	Fecha *(mes/día/año)*

Sección 3. Actualización y Nueva Verificación. Se debe llenar y firmar por el empleador.

A. Nombre *(de ser el caso)*	B. Fecha de re-contratación *(mes/día/año) (de ser el caso)*

C. Si la autorización de trabajo previa de su empleador ha expirado, proporcione la información actual en la que indique la elegibilidad actual para trabajar.

Título de Documento: _____ Nº de Documento: _____ Fecha de Vencimiento *(si la hay)*: _____

Certifico, bajo pena de perjurio, con mi mejor conocimiento que este empleado se encuentra apto(a) para trabajar en los E.U.A. En caso de que el empleado haya presentado documentos, los documentos que he revisado aparentan ser genuinos y referentes al empleado.

Firma del Empleado o Representante Autorizado	Fecha *(mes/día/año)*

LISTAS DE DOCUMENTOS ACEPTABLES

LISTA A **Documentos que Establecen Ambas la Identidad y Eligibilidad Para Trabajar**	O	LISTA B **Documentos que Establecen la Identidad**	Y	LISTA C **Documentos que Establecen la Elegibilidad para el Empleo**
1. Pasaporte Estadounidense (vigente o vencido)		1. Licencia de conducir o Tarjeta de Identificación (ID) emitida por el estado o territorio de los Estados Unidos si contienen fotografía o el nombre, fecha de nacimiento, género, altura, color de ojos y dirección		1. Tarjeta de Seguro Social de los Estados Unidos emitida por la Administración de Seguro Social (con excepción de una tarjeta que indique que no se encuentra apto(a) para trabajar)
2. Tarjeta de Residencia Permanente o Tarjeta de Registro de Extranjeros (Formulario I-551)		2. Tarjeta de Identificación (ID) emitida por agencias o entidades del gobierno federal, estatal o local o si contiene una fotografía o información tal como el nombre, fecha de nacimiento, sexo, estatura, color de ojos y dirección		2. Partida de nacimiento en el extranjero emitida por el Departamento de Estado (Formulario FS-545 o Formulario DS-1350)
3. Pasaporte extranjero vigente con un timbre temporal I-551		3. Identificación estudiantil con fotografía		3. Una copia original o certificada de la partida de nacimiento emitida por el estado, condado, autoridad municipal o territorio de los Estados Unidos con sello oficial
4. Tarjeta de Autorización de Empleo vigente con fotografía (Formulario I-766, I-688, I-688A, I-688B)		4. Tarjeta de registro de votante		4. Documento tribal de Nativo-Americano
		5. Tarjeta Militar de los Estados Unidos o tarjeta del servicio militar		5. Tarjeta de Identificación de Ciudadano(a) Estadounidense (Formulario I-197)
5. Pasaporte extranjero vigente con Registro de Entrada y Salida Vigente, Formulario I-94, llevando el mismo nombre que figura en el pasaporte y conteniendo una certificación del estado no inmigrante del extranjero, si ese estado autoriza a el extranjero a trabajar para el empleador		6. Tarjeta Militar de Identificacion de dependientes		6. Tarjeta emitida para el uso de Ciudadano Residente en los Estados Unidos (Formulario I-179)
		7. Tarjeta de Marino Mercante de la Guardia Costera Estadounidense		
		8. Documento tribal de Nativo-Americano		7. Autorización de Empleo vigente emitida por DHS (que no sea una de las de la lista A)
		9. Licencia de condicir emitida por el gobierno canadiense		
		Para personas menores de 18 años de edad que no puedan presentar los documentos en la lista anterior:		
		10. Expediente académico o tarjeta de calificaciones		
		11. Informe médico, de clínica u hospital		
		12. Registro de guadería		

En la parte 8 del Manual para Empleadores (M-274) encontrará ejemplos de muchos de estos documentos.