

# Labor and Employment Update

EMPLOYEE VERIFICATION AND THE NEWLY RELEASED I-9 FORM



By Matthew DeVries

Labor and employment laws regularly intersect with the construction industry—whether you are dealing with employment issues such as the hiring and firing of employees, compliance with state and federal E-Verify requirements, or applicability of project labor agreements on a project.

When you hire a new employee, you are well advised to properly document the process, as you may have certain reporting requirements depending on your construction project. For example, did you know that you are required to complete and retain a Form I-9 for every employee you hire for employment in the United States? The U.S. Citizenship & Immigration Services (USCIS) website lists the following exemptions:

- Individuals hired on or before November 6, 1986, who are continuing in their employment and have a reasonable expectation

of employment at all times. Some limitations to this exception apply.) Also excepted are individuals hired for employment in the Commonwealth of the Northern Mariana Islands (CNMI) on or before November 27, 2009.

- Individuals employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis.
- Independent contractors or individuals providing labor to you who are employed by a contractor providing contract services (for example, employee leasing or temporary agencies).
- Individuals not physically working in the United States.

Even though independent contractors are exempt, federal law prohibits individuals or businesses from contracting with an independent contractor knowing that the independent

contractor is not authorized to work in the United States.

## NEW FORM I-9

On March 8, 2013, the USCIS released a new Employment Eligibility Verification Form I-9 and all employers should begin to use the new form immediately for new hires. The form is now two pages, has expanded instructions, and includes new fields for an email address and phone number in Section 1. The old form can be used until May 7, 2013, and the new form can be used now, but will be mandatory after May 7, 2013.

If you are a contractor or subcontractor and use E-Verify, then you can still require identification of an applicant's social security number. The new instructions make clear that identifying a social security number for Section 1 purposes remains voluntary, unless the employer is enrolled in E-Verify. ■

## ABOUT THE AUTHOR

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