

## New I-9 Form and Tennessee's Amended E-Verify Law *Middle Tennessee SHRM*

April 20, 2017

Presented by:

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### New I-9 Form

- ▶ New I-9 form became mandatory to use on Jan. 22, 2017 (eff. date – 11/14/16 on I-9 form);
- ▶ Most significant change to the I-9 form is addition of “smart” I-9 form as 1 of 3 ways to complete the I-9 form; and
- ▶ “Smart” I-9 form is a downloadable I-9 form, which you complete using Adobe Reader.

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### Smart I-9 Form

- ▶ What can “smart” I-9 form do?
  - ▶ Answer: It has enhanced error checking ability to prevent most common mistakes.
  - ▶ Example: If Section 1 is not completed, you will receive an alert that no data or not all data was entered into required fields.
- ▶ Even with “smart” I-9 form, one must print out form, obtain signature, and monitor reverifications and updates.
- ▶ “Smart” I-9 form does not provide immunity from ICE assessing penalties.

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### Types of I-9 Forms

- ▶ There are now 3 types of I-9 forms:
  - ▶ Paper - completed by hand after printing out blank I-9 form;
  - ▶ “Smart” - downloadable; and
  - ▶ Electronic.




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### Page 1 of I-9 Form




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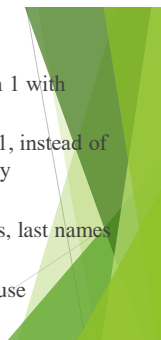
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### Changes in I-9 Form

- ▶ Replacing “Other Names Used” in Section 1 with “Other Last Names Used”;
- ▶ Requiring “N/A” to be entered in Section 1, instead of blanks in fields, where you do not have any information to enter;
  - ▶ Examples – middle initial, email address, last names used, phone number, apt. number;
- ▶ On optional email address, employee can use employee’s work or personal address;




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### Changes in I-9 Form (Cont'd)

- ▶ P.O. Box is permissible for employees but not for employers;
- ▶ Modifying Section 1 to request certain employees to enter either I-94 number or foreign passport information, rather than both;
- ▶ Replacing the word "date" with "today's date" next to signature boxes;
- ▶ Why? To help prevent backdating of documents.

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### Changes in I-9 Form (Cont'd)

- ▶ Providing a box for employees to elect if they did or did not use a preparer or translator;
- ▶ Previously, there was no way to determine if a preparer/translator had been used if the section was not completed.
- ▶ Adding a supplemental third page to I-9 form if using multiple preparers and/or translators;

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### Page 2 of I-9 Form

The image shows a portion of the I-9 Form, specifically the section for the preparer's signature and additional preparers/translators. The form is titled 'Preparer's Signature and Signature of Additional Preparers and Translators' and includes fields for the preparer's name, title, and signature, as well as a section for additional preparers and translators. The form is dated 05/08/2017.

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### Changes in I-9 Form – p. 2

- ▶ Top of page 2, using correct code for USC, LPR, etc.
- ▶ Adding an area in Section 2 to enter additional information to TPS extensions, OPT STEM extensions & H-1B portability;
- ▶ Employer certification – reworded to state that person who physically examines documents and completes Section 2 must be same person who signs certification.
- ▶ Increasing pages of instructions from 6 to 15;

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### Form I-9 Supplement

The image shows the Form I-9 Supplement, Section 2, titled "Employer and/or Third-Party Certifications". It includes instructions for employers and third parties to certify the employee's identity and employment status. The form has fields for "Employer/Third-Party Name", "Date of Birth", "Date of Hire", "Date of Termination", and "Date of Certification". It also includes a section for "Additional Information" and a signature line for the certifier.

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### New I-9 Form for New Hires Only

- ▶ DO NOT have current employees complete new I-9 form;
- ▶ New I-9 form for new hires only.

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### New M-274 Handbook for Employers

- ▶ The USCIS published, on February 15, 2017, a new M-274 Handbook for Employers to reflect the changes in the new I-9 form.
- ▶ It is helpful to read the handbook as it provides lots of information on completing I-9 forms.

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### New Green Cards and EADs

- ▶ USCIS will begin issuing new Green cards and EADs on May 1, 2017. The redesigns use enhanced graphics and fraud-resistant security features to create cards that are more tamper-resistant.
- ▶ Green Cards will have an image of the Statue of Liberty and a predominately green background but will not have optical stripe on back;
- ▶ EAD cards will have an image of a bald eagle and a predominately red background;
- ▶ New Permanent Resident cards and EADs will:
  - ▶ Display the individual's photos on both sides;
  - ▶ Show a unique graphic image and color palette;
  - ▶ Have embedded holographic images; and
  - ▶ No longer display the individual's signature.

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### The Basics of E-Verify



- ▶ If employee contests TNC, employer prohibited from immediately discharging or disciplining employee unless employer obtains other knowledge of unauthorized status;
- ▶ If employee contests TNC, employer must refer employee to SSA or DHS and employee must contact SSA or DHS within 8 business days. Employer should contact agency within 8 business days after referral to receive authorization, final non-confirmation, DHS TNC or updated status.
- ▶ If employer receives final non-confirmation, employee not authorized to work; and
- ▶ Employer should terminate employee or will be subject to penalties for employing undocumented worker.

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### Basics of 2012 Tennessee Lawful Employment Act (TLEA)

- Employers may enroll and use E-Verify for newly-hired employees, or they may accept, copy and retain one of the following:
  - State-issued driver's license or photo ID;
  - Unexpired permanent resident or work authorization card;
  - Birth certificate;
  - Certificate of Naturalization;
  - Unexpired U.S. passport;
  - U.S. citizen identification card; and a few others.

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### Amended TLEA

- ▶ In 2016 legislative session, TLEA was amended:
  - ▶ Employers with 50 or more employees must use E-Verify for newly-hired employees;
  - ▶ New law is effective on January 1, 2017;
  - ▶ The old law still exists for employers with 6 to 49 employees, who are hiring new employees.

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### Amended TLEA (cont'd)

- ▶ Another important amendment to the TLEA is that it strengthens the penalties so that an employer faces a fine of \$500 per day if it fails to remedy its E-Verify violation within 45 days of the state's order.

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### TLEA Penalties

- ▶ The existing penalties continue in effect:
  - ▶ First offense - \$500 penalty + \$500 per unverified employee or copy of documentation not maintained;
  - ▶ Second offense - \$1,000 penalty + \$1,000 per employee not verified or copy of documentation not maintained; and
  - ▶ Third offense - \$2,500 penalty + \$2,500 per employee not verified or copy of documentation not maintained.
- ▶ The same penalties apply to non-employees.

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### TLEA Covers Non-Employees



- If employer contracts with **individual/non-employee**, it must request and maintain copy of one of specified documents, such as state-issued driver's license or identification;
  - Non-employee defined as any individual, other than an employee, paid directly by employer in exchange for the individual's services;
- Subcontractor, who is not an individual, is not covered by this provision under the definition of non-employee.

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### Bruce E. Buchanan

- ▶ Bruce E. Buchanan is a founding partner of Sebelist Buchanan Law PLLC with offices in Nashville and Atlanta. He represents employers and individuals in various aspects of immigration law and employers in employment/labor law. He received his J.D. from Vanderbilt University in 1982. Before going into private practice, Mr. Buchanan served as senior trial specialist for the National Labor Relations Board for 20 years. He also served from 1991 to 2003 as Adjunct Law Professor at William H. Bowen UALR School of Law.
- ▶ Mr. Buchanan writes a blog located at [www.employerimmigration.com](http://www.employerimmigration.com) and is monthly contributor to *HR Professionals Magazine*, where he writes on employer immigration compliance issues. He is also past-chair and editor of Tennessee Bar Association's Immigration Law Section Newsletter.
- ▶ Mr. Buchanan is admitted to practice in Tennessee, Georgia, Florida, and Arkansas, and the U.S. Court of Appeals for the 5th, 6th, 8th, and D.C. Circuits.

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