



*April 29, 2005*

### **Electronic Storage and Signature of Forms I-9: Interim Guidelines Are Issued**

Effective April 29, 2005, employers may store Forms I-9 electronically.

All U.S. employers are required to verify the identity and work eligibility of all employees, including U.S. citizens. Form I-9 is the form used to document this verification. Forms I-9 must be retained for three years after the date of hire or one year after the date of employment is terminated, whichever is later. Recruiters or referrers for a fee are required to retain Forms I-9 for three years after the date of any hire in which they were involved. Failure to properly complete and retain the Forms I-9 subjects employers to civil penalties ranging from \$100 to \$1,100. Prior to April 29, 2005, employers' choices for retaining Forms I-9 were paper, microfilm or microfiche.

On October 30, 2004, the President signed into law legislation authorizing employers to retain Forms I-9 in electronic format and to use electronic signatures for the required attestations on the forms. The legislation had an effective date of April 29, 2005, or the effective date of implementing regulations, whichever occurred first.

The Department of Homeland Security is ultimately responsible for implementing regulations and has not yet done so. However, U.S. Immigration and Customs Enforcement has provided some interim guidelines.

With regard to the storage of Forms I-9, the guidelines note that employers may either complete and retain the forms wholly electronically, or may complete the forms on paper but store the forms electronically. The guidelines suggest, but do not require, that an electronic Forms I-9 storage system may include a quality assurance program with regular evaluations of electronically stored data and methods to prevent and detect the unauthorized creation of, addition to, alteration of, deletion of or deterioration of electronically stored data. The guidelines also suggest but do not require that in order to facilitate Forms I-9 inspections, employers may consider an electronic storage system that includes an indexing system and the ability to reproduce legible hard copies of electronically stored forms. The guidelines note there is no single government-wide electronic record-keeping standard, and reference Internal Revenue Service standards, which require the quality assurance, indexing, and printing capabilities suggested in the interim guidelines.

With regard to electronic signatures, the guidelines likewise note there is no single government-wide standard. The guidelines suggest electronic signatures should be created through the use of a system that includes a method to acknowledge the attestation has been read by the signatory and provides for the contemporaneous attachment or logical association of the electronic signature to the Form I-9. The guidelines reference several methods of electronic signature, including electronic signature pads, Personal Identification Numbers ("PINs"), biometrics and "click to accept" dialog boxes.

The guidelines cite several advantages to electronic signature and storage of Forms I-9, including cost savings; better insurance that the forms are properly completed and retained; and easier searchability, which is important for re-verification, quality assurance and inspection purposes.

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For more information on this issue, please contact a member of the Labor and Employment Practice Group in one of our offices.

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