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# Special Report for HR Professionals

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## WHEN MUST I-9 FORMS BE RE-VERIFIED?

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For all things related to immigration, we turn to the experts at [www.visalaw.com](http://www.visalaw.com). Greg Siskind and his colleagues provide legal support to both employers and employees on issues related to immigration. They publish a free periodical called, *Siskind's Immigration Bulletin*. You can register at <http://www.visalaw.com/bulletin.html>.

Here are some thoughts from *Siskind's Immigration Bulletin* (March 18, 2009) on the subject of I-9 Form re-verification.

"If an employee is not a U.S. citizen or lawful permanent resident, they are likely working based on a status with a defined end date. For these employees, the employer must note the expiration of their documents on the I-9 Form and then must pull their I-9 Form before the expiration date and re-verify that the employee's status has been extended. Employers need to establish a reliable tickler system to prompt re-verification. Aside from complying with the re-verification rule, this system will also ensure that an employer that needs to extend a work visa for an employee will not forget to take care of this critical task (something that is, unfortunately, neglected by many employers and can result in an employee falling out of legal status). Green cards and passports with expiration dates do not need to be re-verified."

What if the re-verification section of the form has been filled out from a prior re-verification? The employer simply "completes a new Form I-9 Section 3. The employer should put the employee's name in Section 1 and retain the new form with the original."

If an employee presents a Social Security card to show employment authorization at re-verification when they presented an expiring Employment Authorization Document or I-94 at the time of hire, there should be no problem. Be sure "the Social Security card is not restricted with a statement such as 'not valid for employment' or 'valid for work only with DHS authorization' (these documents are not valid List C documents).

[Go to I-9 Form on Page 2](#)

**I-9 Form Continued from Page 1**

Employers may not specify which documents an employee may present either at the time of hire or at the time of re-verification. Keep in mind that an employee may have become a permanent resident or otherwise received employment authorized status allowing the employee to obtain a Social Security card absent the sponsorship of the employer so the employer should not assume the employee is really unauthorized.”

A new version of the I-9 Form is expected in the coming weeks. If you are performing a re-verification of employment authorization when there have been changes on the I-9 Form, you should complete Section 3 of the new version of the Form I-9 and only accept documentation of employment eligibility from the Lists of Acceptable Documents in the current I-9 instructions.

When former employees return to work with a company they “often don’t need to fill out a new I-9, but if that is not done, the employer needs to re-verify the employee’s work authorization in Section 3 of the Form I-9. In order for an employee to be considered a re-hire, the employer must be rehiring the employee within three years of the initial hiring date...”

Be sure you retain your I-9 Forms for the specified period of time. “For terminated employees, the form must be retained for at least three years from the date of hire or for at least one year after the termination date, whichever comes later.” That means employers must compute both dates...the date three years from the date of the employee’s date of hire and the date one year from the termination date. “The later date is the date until which the Form I-9 must be retained.”

Thank you, VisaLaw.

*It is the employer’s responsibility to track and re-verify all I-9 Form support documents that have expiring work authorization dates.*

## FINDINGS ON OFCCP SETTLEMENT STUDY TO BE REPORTED AT NATIONAL MEETING

The Center for Corporate Equality, a nonprofit employer organization based in Washington, DC, has completed a review of enforcement statistics resulting from the Office of Federal Contract Compliance Programs (OFCCP) activities. The study points out a distinct need for “transparency in OFCCP reporting.” The study results will be presented to the 27<sup>th</sup> Annual Industry Liaison Group National Conference (NILG) scheduled for July 28 through July 31, 2009 in Atlanta, GA.

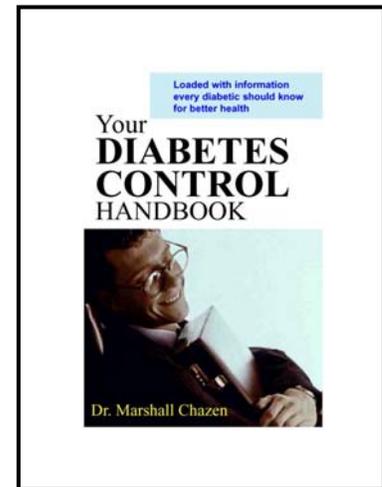
One finding of the study was that, “Nearly all of the settlements (95 percent) involved allegations of systemic discrimination in hiring. Only five percent of the settlements involved allegations of systemic compensation discrimination.” You can get a copy of the study report at [www.cceq.org](http://www.cceq.org)

## YOUR DIABETES CONTROL HANDBOOK

All you have to do is watch TV these days and the commercials will give you a good idea of how big the problem of Diabetes has become. Tremendous resources are being expended to find a cure for this disease.

Would you like to increase your knowledge and personal confidence while lowering your fears about diabetes? This handbook is your complete reference in efforts to control the effects of the disease. You will refer to it again and again whether you are a patient, family member, or caregiver.

<http://www.management-advantage.com/products/DiabetesControl.htm>



## OFCCP SCHEDULING ANNOUNCEMENTS

On March 9, 2009, the Office of Federal Contract Compliance Programs (OFCCP) released to its Regional offices the list of supply and service contractor establishments for use in scheduling compliance evaluations between now and September 2009.

OFCCP's web site says there are approximately 5,000 facilities on the list that have either self-identified as federal contractors or have been identified by OFCCP. The Federal Contractor Selection System (FCSS) is used to create the list. FCSS includes a "mathematical model that ranks Federal contractor establishments based on an indicator of potential workplace discrimination. The list also includes a number of establishments identified through external Federal contract databases as part of OFCCP's Contracts First Initiative."

"The list excludes establishments based on a variety of factors, including, for example, establishments that are currently undergoing a compliance evaluation, were evaluated within the last 24 months, or have received the Secretary of Labor's Opportunity Award of an Exemplary Voluntary Efforts Award within the last three years." Functional Affirmative Action Program (FAAP) agreements and Corporate Management Compliance Evaluations (CMCE) are selected for evaluation through a separate process.

FCSS limits the number of "new compliance evaluations identified to 25 new evaluations during a scheduling cycle. The 25-establishment limit does not apply to compliance evaluations scheduled as a result of the agency's CMCE or FAAP initiatives, contract award notices, directed reviews, conciliation agreement monitoring, or credible reports of an alleged violation of a law or regulation, including complaints."

[www.dol.gov/esa/ofccp/regs/compliance/AnnouncementofSpring2009CSA.html](http://www.dol.gov/esa/ofccp/regs/compliance/AnnouncementofSpring2009CSA.html)

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## OFCCP MAY SOON BE RELEASING YOUR CONFIDENTIAL DATA

On March 19, 2009, Attorney General Eric Holder issued comprehensive new *Freedom of Information Act (FOIA)* guidelines that direct all executive branch departments and agencies to apply a presumption of openness when administering the FOIA. According to an article in the Legal Times, the Holder memo said his Department will "defend a denial [of information release under FOIA] only if the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or disclosure is prohibited by law." He directed agencies "not to withhold records simply because they can technically do so...[and] to make discretionary disclosures of records and to release records in part whenever they cannot be released in full."

Under the Bush Administration, the Office of Federal Contract Compliance Programs (OFCCP) applied the exemption under FOIA that applied to confidential and trade secret information. It sounds like the Obama Administration is not going to be willing to use that exemption.

<http://www.usdoj.gov/opa/pr/2009/March/09-ag-253.html>

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