

# Keeping Up to Speed in the Electronic Age: Electronic Signature and Storage of the I-9 Form

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On April 28, 2005, a new law took effect that allows employers to sign and store I-9 Forms electronically. The U.S. Department of Homeland Security ("DHS"), Citizenship and Immigration Services ("CIS"), is still in the process of developing a regulation for this new law but it is important to note that this new development resulted from complaints by frustrated employers who were required to keep paper I-9 Forms (or to store the forms on microfilm or microfiche) when all other aspects of their business were susceptible to being automated.

As most Human Resource Professionals are aware, the I-9 Form requirements stem from Section 274A of the Immigration and Nationality Act ("INA") and implementing regulations, which require all U.S. employers (including agricultural associations or employers who recruit or refer persons for employment for a fee) to verify on the Form I-9 the identity and employment eligibility of all employees - including U.S. citizens - hired to work in the United States after November 6, 1986. Completed I-9 Forms are not filed with the government. Instead, they are retained by the employer and made available for inspection by DHS, the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"), or the Department of Labor ("DOL"). These forms must be retained for three years after the date of hire or one year after the date the employee is terminated, whichever is later. Failure to properly complete and retain the I-9 Form can subject an employer to civil penalties.

On October 30, 2004, President George W. Bush signed legislation into law (Public Law 108-390) authorizing employers to retain I-9 Forms in electronic format in addition to the current choices of paper, microfilm or microfiche. The legislation also authorizes attestations on the I-9 Form to be made using an electronic signature.

The legislation prescribes an effective date of April 28, 2005. Under the new law, employers have several electronic I-9 Form options. For example, employers may continue to complete hard-copy I-9 Forms but may choose to store them electronically or they may choose to both complete and retain the I-9 Forms electronically.

There are a number of advantages for employers using the electronic I-9 Forms:

- Electronic Form I-9 storage is more cost-effective.
- Electronic I-9 Forms will allow employers to ensure that each I-9 Form is properly completed and retained.
- Electronically retained I-9 Forms are more easily searchable (which is important for re-verification, quality assurance and inspection purposes).

For more information about the new Employment Eligibility Verification law, please feel free to contact David at [info@visaserve.com](mailto:info@visaserve.com) or by calling his office at 201-236-9998.

