ROSNER PARTNERS

COUNSEL FOR CORPORATE IMMIGRATION

- home
- job openings
- staff
- newsletters
- request for consultation
- directions

useful links

- US Citizenship & Immigration Services
- US State Department
- Embassy World
- Department of Labor ETA

Newsletter

Immigration Law Update

Current Developments in Employment-Based Immigration

By Rosner Partners, L.L.C.

February 2009

- **New Form I-9 (Employment Eligibility Verification) to go into effect 04/03/2009**
- **Employer requirements for H-1B layoffs**
- **Visa Waiver Program and the new ESTA requirement**
- **New requirements for the E-Verify System**
- **H-1B filings for FY2010**

This is the latest installment in our efforts to keep you apprised of the rapidly changing U.S. immigration environment. Some of the most recent changes could have a serious impact on you or your employees, and we urge you to communicate these changes to interested parties.

Form I-9 Revisions

U.S. Citizenship and Immigration Services (USCIS) has revised the Employment Eligibility Verification (I-9) Form and requirements. The new requirements include a revised list of acceptable identity documents and further specify that expired documents are not considered acceptable forms of identification. The new changes and form will go into effect 04/03/2009.

Employers must complete a Form I-9 for all newly hired employees to verify their identity and authorization to work in the United States. The list of approved documents that employees can present to verify their identity and employment authorization is divided into three sections: List A documents verify identity and employment authorization, List B documents verify identity only, and List C documents verify employment authorization only.

The new I-9 Form and requirements eliminate Forms I-688, I-688A, and I-688B (Temporary Resident Card and older versions of the Employment Authorization Card/Document) from List A. List A has also been revised to include the new U.S. Passport Card, foreign passports containing specially-marked machine-readable visas, and documentation for certain citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI).

Employers must use the revised Form I-9 for all new hires and to re-verify any employee with expiring employment authorization as of 04/03/2009. The Handbook for Employers, Instructions for Completing the Form I-9 (M-274) will be updated to reflect these changes and will be available on the USCIS website (**www.uscis.gov**) in the near future. The current version of the Form I-9 (dated 06/05/2007) will no longer be valid as of 04/03/2009. **The new version of the Form I-9, which goes into effect on 04/03/2009, is available on the USCIS website, www.uscis.gov**.

Please feel free to contact us at **immigration@rosnerlaw.com** for assistance or for additional information regarding the revisions to the Form I-9.

Rules Concerning Layoffs and Employees in H-1B Status

As the economy continues to struggle, many employers are finding themselves faced with the difficult decision of having to layoff employees in order to cut costs. When terminating an employee, the employer has the following obligations with regard to H-1B nonimmigrant status:

Termination of Employment

In the event the employer terminates an H-1B nonimmigrantâ€™s employment prior to the end of the validity period in the H-1B petition, the employer is required to continue to pay the H-1B nonimmigrant the required wage unless the employer notifies USCIS of the termination of employment AND the employer pays the reasonable costs of the H-1B nonimmigrantâ€™s return transportation to his or her residence abroad, if applicable. In some cases, H-1B nonimmigrants have successfully sued their former employers for back wages when the employer failed to notify USCIS of termination of employment. We strongly advise you to notify us, or USCIS directly, if you have an H-1B worker that ceases employment.

Please note that there is no grace period upon termination of H-1B employment. If the employee has not secured a new position with a new H-1B employer or changed to another visa status, the employee must immediately depart the United States.

Please contact us at **immigration@rosnerlaw.com** if you have additional questions about layoffs and your responsibilities to your employees in H-1B status.

Electronic System for Travel Authorization (ESTA) Requirements

Effective January 12, 2009, all foreign nationals traveling to the United States under the Visa Waiver Program (VWP) are now required to obtain advanced travel authorization through an online pre-approval system called the Electronic System for Travel Authorization (ESTA). ESTA approval will allow a traveler to board a carrier to the U.S. under the VWP, but will not guarantee admission to the U.S. Travelers entering the U.S. under the VWP will still be required to undergo inspection at U.S. ports of entry. The purpose of the ESTA is to proactively determine whether VWP travelers pose any law-enforcement or security risks. Submitted ESTA applications are reviewed against the appropriate law-enforcement databases. VWP Travelers must obtain ESTA authorization at least 72 hours before departing for the United States.

ESTA applications are to be submitted online at **https://esta.cbp.dhs.gov/**. VWP travelers will need to provide biographic and passport information, information about the upcoming travel (although specific details are not required), and information about the applicantâ€™s eligibility to use the VWP including previous arrests and convictions, communicable diseases, and previous visa denials. In most cases, once an application is submitted online, the ESTA website will provide an almost immediate determination of eligibility for travel under the VWP.

Once approved, an ESTA travel authorization remains valid for up to two years or until the VWP travelerâ€™s passport expires, whichever occurs first. An ESTA travel authorization will be valid for multiple entries into the United States during the period of validity.

Federal Contractors Now Required to Use E-Verify System

Beginning May 21, 2009, federal contractors and subcontractors will be required to register in and use the E-Verify system to verify the eligibility of their employees to work in the United States. The new rule, published November 14, 2008, applies only to contracts awarded and solicitations issued after May 21, 2009. Most existing federal contracts will not be affected by the rule unless they were extended, renewed, or otherwise amended on or after May 21, 2009. The final rule exempts contracts that are for less than $100,000 and those that are for commercially available off-the-shelf items.

The E-Verify program is an internet-based system operated by USCIS in partnership with the Social Security Administration (SSA). The E-Verify System allows participating employers to verify the employment eligibility of new hires by running online employment authorization checks against SSA and Department of Homeland Security (DHS) databases using employee Social Security Numbers and alien registration numbers. To participate in the E-Verify program, employers must register online at **https://www.vis-dhs.com/EmployerRegistration** and sign a memorandum of understanding (MOU), which outlines the terms of agreement between the employer, the SSA and USCIS.

Federal contractors participating in E-Verify for the first time are given 90 days from enrollment to begin using the system for new and existing employees. Federal contractors are given 30 days to initiate verification of existing employees who have not previously gone through the E-Verify system when they are newly assigned to a covered federal contract.

Now is the Time to Initiate New H-1B Petitions for FY2010!

As most of our readers are all too well aware, the finite number of H-1B visas available for each fiscal year is grossly insufficient to meet the needs of the U.S. businesses across the country that rely on the contributions of foreign workers in meeting annual business goals. At Rosner Partners, we are constantly urging our clients to plan ahead in initiating the H-1B petition process for new hires who do not currently hold H-1B status with another employer.

If last yearâ€™s experience is any indication, we can expect that H-1B numbers for beneficiaries who do not hold a U.S. Masterâ€™s degree will be exhausted immediately after they become available, with the numbers reserved for foreign professionals with U.S. Masterâ€™s degrees following shortly thereafter. March 31 is less than two months away, and marks the first (and probably the last) date that employers can file H-1B petitions on behalf of new hires for the 2010 fiscal year. Although beneficiaries of these petitions will not be eligible to begin work pursuant to H-1B status until October 1, 2009, petitioning companies risk forfeiting any ability to hire an H-1B professional worker in the next fiscal year if the petition is not filed on March 31.

With this important date quickly approaching, this is the time to get the process started. Employers who have not done so already must evaluate company needs for the next year and determine if H-1B workers may be required to meet business needs. In particular, we urge our clients to consider the companyâ€™s needs with regards to interns and employees currently working pursuant to F-1 Optional Practical Training, who may require an H-1B petition to extend their employment with the company.

In the event that H-1B candidates are identified, kindly send us the necessary information to get started, including the foreign nationalâ€™s resume, job title, job description, job location and salary. The sooner we receive this information, the sooner we can prepare the petition for timely submission to USCIS. We cannot emphasize enough the importance of acting swiftly in this matter.

For additional information about any of the topics presented here, please **contact us.**

Return to Newsletter Index

Rosner Partners, Counsel for Corporate Immigration
The Caxton Building • Suite 601 • 812 Huron Road • Cleveland, Ohio 44115 • Map to our Offices
Telephone: (216) 771-5588 • Facsimile: (216) 771-5894 • E-Mail:immigration@rosnerlaw.com