

ROSNER PARTNERS

COUNSEL FOR CORPORATE IMMIGRATION



September 12, 2012 Serving the immigration needs of businesses and individuals Phone: (216) 771-5588

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

useful links

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

Sign up for our 
Email Newsletter

Privacy by  **SafeSubscribe**SM
For Email Newsletters you can trust



Newsletter

Immigration Law Update

Current Developments in Employment-Based Immigration
By Rosner Partners, L.L.C.

Holiday Wishes from Rosner Partners
From our Family to yours, we wish you
all a wonderful holiday season and new
year filled with peace, joy, and
hopefully even a little prosperity.

December 2008

- **USCIS Revises Form I-9 (Employment Eligibility Verification)**
- **Effects of Layoffs on H-1B Visa Holders**
- **H-1B Petitions in 2009.**

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 submitted to the Federal Register an interim final rule that will streamline the Employment Eligibility Verification (Form I-9) process. The interim final rule narrows the list of acceptable identity documents and further specifies that expired documents are not considered acceptable forms of identification.

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 rule eliminates Forms I-688, I-688A, and I-688B (Temporary Resident Card and older versions of the Employment Authorization Card/Document) from List A. USCIS no longer issues these cards, and all that were in circulation have expired. The rule also adds to List A of the Form I-9 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).

The rule makes other, technical changes to update the list of acceptable documents. The revised Form I-9 includes additional changes, such as revisions to the employee attestation section, and the addition of the new U.S. Passport Card to List A.

Employers must use the revised Form I-9 for all new hires and to re-verify any employee with expiring employment authorization as of 01/31/2009. 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 (<http://www.uscis.gov/portal/site/uscis>) in the near future. The current version of the Form I-9 (dated 06/05/2007) will no longer be valid as of 01/31/2009.

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

Due to the downturn in the economy, many companies are opting to temporarily layoff employees in order to save costs with the intention of continuing their employment after a set period of time. In the case of temporary layoffs, the employer has the following obligations with regard to H-1B nonimmigrant status:

"Anti-Benching" Requirements

If the employer temporarily lays off the H-1B nonimmigrant, the employer is obligated to continue to pay his or her salary as described in the Labor Condition Application (LCA) and the H-1B petition during the nonproductive period. Nonproductive periods need not be compensated, except as required by other employment laws, if such periods are a result of the employee's request, such as maternity leave or other leave of absence.

Termination of Employment

In the event the H-1B nonimmigrant's employment ceases prior to the end of the validity period in the H-1B petition, at the employer's request, 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 nonimmigrant's return transportation to his or her residence abroad, if applicable. Due to this change in the law, we strongly advise you to notify us, or USCIS directly, if the H-1B worker 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.

H-1B Petitions in 2009

If your company is interested in sponsoring a Foreign National to work in H-1B status, please contact our office in January 2009. Congress has set limits on the number of H-1B visas available to nonimmigrant foreign workers within a given year and in FY 2010, it appears as though the visa cap will reflect last year's numbers. In FY 2009, 65,000 visas were made available for Foreign Nationals with a Bachelor's degree from a U.S. Institution of Higher Education or an equivalent degree from a non-U.S. institution. Additionally, a 20,000 cap exemption for beneficiaries with U.S. Masters or higher degrees was in effect. Last year, within one week of the filing date (April 1, 2008), over 163,000 H-1B petitions had been submitted to USCIS and a random lottery was implemented to determine the visas that would be processed.

Obviously, this is a competitive process due to the shortage of H-1B visas made available each year. As a new Administration will enter the White House in January 2009, the number of H-1B visas made available may be raised before the submission deadline of April 1, 2009. Rosner Partners will keep you informed of any changes in the H-1B cap process. Please contact us at immigration@rosnerlaw.com or at (216) 771-5588 after the start of the New Year so that we can begin preparation of your petitions for this nonimmigrant status.

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

all rights reserved.

no liability for any loss or damage for errors or omissions on the web site, whether arising in contract, negligence, or otherwise.

Send any comments regarding this website to [webmaster](#).