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# I-9 Forms – The Who, What, Why and Where

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As immigration continues to grab the headlines, it is interesting to note that these reforms often directly affect hiring processes and procedures. The I-9 form and the procedures surrounding it were an outgrowth of the Immigration Reform and Control Act of 1986. Over the years, it has been incorporated into the welcome and hiring packages of new employees throughout the country. As enforcement of immigration regulations increase in tandem with fines, and in some cases criminal prosecutions, it is important to review your firm's I-9 procedures.

The I-9 form and the procedures developed were created because Congress wanted to ensure that “foreign appearing” U.S. citizens and legal aliens were not turned away from positions because of the added paperwork and the fear that these individuals were not authorized for employment. One way they found to combat these possible issues was to impose the same proof of employment authorization for everyone, foreign nationals, permanent residents and U.S. citizens. It is illegal to require different levels of proof, such as requiring that a permanent resident produce their permanent resident card if they are providing any two documents from List B and C. For instance, the employee may provide a valid state driver's license and social security card and still meet the requirements listed on the I-9 form.

Recently, the Justice Department filed a lawsuit against John Jay College alleging that the school imposed “unnecessary and discriminatory hurdles to employment for work authorized non-U.S. citizens.” The school required additional or different employment eligibility verification documents for non-citizens as compared to U.S. citizens in order for non-U.S. citizens to either be hired or re-verify their employment. John Jay allegedly fired an employee when she provided her unrestricted Social Security card and driver's license for the purpose of employment verification and did not provide them with a copy of her permanent residence card. Since she met the requirements according to the I-9 form, she should not have been required to provide a permanent resident card. Therefore, John Jay's standard practice or operating procedure allegedly resulted in a violation of the Immigration and Nationality Act.

This seems like a good time for your own offices to begin taking a look at your own I-9 procedures to make sure that you are in line with US regulations. In 2009, a new I-9 form was issued. A first step would be for you to make sure that you are using the most recent and updated I-9 forms. The forms that

are now valid are those with the 8/07/09 or 2/02/09 revised date. The revision date can be found on the lower right hand corner of the form. You may download the most up-to-date forms at [www.uscis.gov](http://www.uscis.gov).

The form is comprised of two sections, one for the employee to swear that they are authorized to be employed in the United States, and the other is for the employer to swear that they have examined the original documents presented by the employee and that they believe the documents are original and belong to the individual who presented them. You should make sure that names, ages and photos all match and make sense.

There is a handbook called Handbook for Employers at [www.uscis.gov](http://www.uscis.gov) that you can use to ensure that you are completing the forms correctly. Please keep in mind that the correct completion of these forms is extremely important. If the forms are not completed exactly as they should, the employer may be fined or could be charged with criminal offenses by Immigration Customs Enforcement.

Here are some helpful tips:

- Section 1 should be completed solely by the employee. They must sign and date the form and they must be the one who chooses the documents they will produce.
- The employee's valid social security number must be on the form.
- The section where the employee's social security number belongs should never be left blank. If they are waiting for their number to be issued, they should note that on the form and you follow up with the employee. If the employee has received a receipt from Social Security as proof of requesting the number, that should be stapled to the form.
- One of the four boxes denoting their status in the United States must be checked by the employee.
- A street address is mandatory. A post office box number is not acceptable because the regulations require that the address where the employee currently lives be provided, not where they receive mail. The employee must sign and date the form in the correct boxes.
- Section two must be completed by the individual who normally does the hiring in your office or who regularly is in charge of these documents.
- The I-9 Form requires only one document from List A, or one document from both List B and List C. Even if more than one document from List A is provided, only one should be recorded.
- Make sure you note the expiration date and write it on the form. Expired documents are no longer accepted as proof of eligibility or identity.
- Do not base your decision on copies, you absolutely must view the original documents and sign the employer's certification and print or type your full name.
- You should only sign the form if you have personally viewed the original documents. Keep in mind you are making a sworn statement that you are viewing these documents.
- The business name and address should be placed in the employer's certification block.

- The form must be dated on the day it is completed.
- If you are unsure whether any of the documents the employee is producing is appropriate, please make sure you contact your legal counsel for confirmation.

Once the form is completed, you should make sure that it is retained in a file specifically for I-9 forms. Keep all of your forms for your current employees in alphabetical order and attach copies of the documents used to verify identity and work eligibility. If you are using the E-verify program, you should attach those receipts as well. Keep the terminated employees in a separate file. You must keep the terminated employees for three years after the employee's date of hire or for one year after the date employment is terminated, whichever is later.

You should also keep a separate file with the I-9 forms on which you will need to take some type of action in the future. For instance, when an employee's visa or employment authorization card will expire or when you are waiting for Social Security numbers to be issued for a specific employee.

Make sure you have a system in place and that you periodically review the forms to make sure they are up to date.

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