

The I-9 Form and Your Employees

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On November 6, 1986, the Immigration Reform and Control Act (IRCA) went into effect to combat the employment of illegal aliens in the United States. This act requires employers to hire and retain only individuals who are authorized to work in the U.S. and puts stringent penalties on those that knowingly employ illegal aliens. To enforce these guidelines, IRCA requires employers to verify a potential employee's eligibility to work in the U.S. by completing the Employment Eligibility Verification Form known as the I-9 Form. By completing this form, the employer is certifying that he/she has viewed documents proving that the potential employee is authorized to live and work in the U.S. For the first time in 16 years, the Federal Government has changed the I-9 Immigration Form. Find more information here:

<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnexto id=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>.

In addition to strict employment regulations regarding eligibility, IRCA also prohibits employers (with four or more employees) from discriminating against an individual based on national origin or citizenship status while going through the hiring process, during termination, recruiting or referrals. Any discrimination by refusing to accept legal documents during one of these processes is known as "document abuse" and is strictly prohibited under the provisions of IRCA. Again, employers are subject to penalties if they do not comply with these regulations.

With the increased use of technology, President George W. Bush signed legislation on October 30, 2004 (it went into effect April 25, 2005), allowing employers to retain and sign I-9 Forms in electronic format. Also, the Department of Homeland Security has set up an internet based system that allows participating employers to electronically verify the employment eligibility of new hires. See http://www.dhs.gov/ximgtn/programs/gc_1185221678150.shtm for more information.

Completing the I-9 Form <http://www.uscis.gov/files/nativedocuments/m-274.pdf>

To thoroughly complete the I-9 Form, both the employer and employee must go through several steps. Under the amendment to IRCA, employers can complete I-9 Forms in paper form and store it in its original form, complete it in paper form and store it electronically or they can both complete and store it electronically.

1. The employee completes Section 1 – name, address, date of birth, social security number and citizenship status.
2. The employee supplies original documents authorizing his/her identity and employability from a list of approved documents by the U.S. Citizenship and Immigration Services (USCIS).
3. The documents must be unexpired when they are presented.

List A: Documents Establishing Identity and Employment Eligibility

- ✓ U.S. Passport
- ✓ Unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport containing an endorsement of the alien's non-immigration status (if that status authorizes the alien to work for the employer)
- ✓ Unexpired foreign passport with a temporary I-551 stamp
- ✓ Unexpired Employment Authorization Document containing a photograph: Form I-766 Employment Authorization Document.

- ✓ Temporary I-551 printed notation on a machine-readable immigrant visa.
- ✓ Passport issued from the Federal State of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) with a valid Form I-94 or I-94A.

List B: Documents Establishing Identity Only

- ✓ Driver's license or identification card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color or address
- ✓ School identification card with photograph
- ✓ Voter's registration card
- ✓ U.S. military card, draft record or military dependent's identification card
- ✓ Identification card issued by federal, state or local government agencies or entities, containing a photograph and name, date of birth, gender, height, eye color and address of employee
- ✓ U.S. Coast Guard Merchant Marine Card
- ✓ Native American tribal documents
- ✓ Canadian driver's license
- ✓ Those under 18 can present a school record, report card, clinic or doctor record and a day-care or nursery school record

List C: Documents Establishing Employment Eligibility Only

- ✓ U.S. Social Security Number Card issued by the Social Security Administration
- ✓ Original or certified copy of a birth certificate issued by the state, county, municipal authority or outlying possession of the United States bearing an official seal
- ✓ Certificate of birth abroad issued by the Department of State (Form FS-545 or Form DS-1350)
- ✓ Unexpired DHS employment authorization document
- ✓ Form I-197 U.S. Citizen Identification Card
- ✓ Native American tribal document
- ✓ Form I-179 Identification Card for Use of a Resident Citizen in the United States

4. The employer copies down information from the provided documents in Section 2 – document title, issuing authority, document number and expiration date. (NOTE: The employer cannot request more documents than those listed on List A, B and C without penalty).

5. The employer completes the certification portion of Section 2 – employee’s date of employment, signature and title of the person reviewing the documents, name of the business, address of the business and date certification was signed.
6. If the employee is a rehire within three years of previous employment and the employer still has the individual’s I-9 Form on file, the employer should complete Section 3 – date of rehire and title, number and expiration date of documentation establishing current employability (if previous document is expired). The employer must use a new I-9 Form if Section 3 is already filled out or if three years has passed.
7. The employer is then required to maintain the form in an accurate, reliable manner and with integrity so that no one makes alterations to the form without proper authorization. This goes for both electronic and paper storage.
8. The employer may photocopy the documents used to verify identity and employability but he/she is not required to by law. Should the employer decide to photocopy documents received from one potential employee, he/she should do so for all. The employer should also weigh the consequences of photocopying the documents for several reasons:
 - If the documents are not genuine, the employer has a copy showing that they accepted falsified documents.
 - Storing large amounts of documents takes up space and costs money to make lots of copies.
 - If the employer is audited and has photocopies of forged documents that were unknowingly accepted as actual documents, there is proof.
 - Retaining copies allows employers to make corrections to paperwork.

Retaining the I-9 Form

Employees working less than three business days must complete Sections 1 and 2 before beginning to work. If the individual is hired for work lasting longer than three days, the form must be filled out before the end of the third day of employment. Employers can hire an outside business or contractor to verify a potential employee’s eligibility, yet the company is ultimately responsible for the contractor’s actions and the employee’s status. Once the I-9 form is completed, the employer is required to keep the form on file for at least three years from the date of hire for current employees and one year after the individual leaves the company. Hard copies should be stored in alphabetical order in a folder marked “I-9 Forms” or in an electronic folder. Should an authorized official of the USCIS, the Department of Labor (DOL) or the Office of Special Counsel for Immigration Related Unfair Labor Practices request copies of the forms for an I-9 audit or otherwise, the employer must have the original forms available on location within three days of the request.

To ensure that employers do not forget to obtain documentation and completed I-9 forms, they should establish a reminder system. This also goes for work authorization documentation for existing employees that has an expiration date. Employers must re-verify the employee’s eligibility to work before the date that the document(s) expires, except for Permanent Residency Cards (green cards).

Employees without Documents

If a new employee is unable to produce the required documents within three business days of hiring, the employee must present a receipt for the application of replacement documents within the three business days, and the actual required document within 90 days of hire. NOTE: This procedure is not applicable to an alien who indicates that he or she does not have work authorization at the time of hiring.

Employer Sanctions

Under IRCA, employers can be fined for not complying with the guidelines of the I-9 form or for accepting fraudulent documents when determining employment eligibility.

- Employers hiring individuals who are knowingly unauthorized to work in the U.S.: Fines of \$375-\$3,200 for each employee (first offense), \$3,200-\$6,500 for each employee (second offense) and \$4,300-\$16,000 for each employee (subsequent offenses).
- Employers who do not properly complete, retain or present the I-9 Form: Fines of \$110-\$1,100 for each employee.
- Employers who have a pattern of hiring unauthorized employees or who continue to employ individuals after discovering that they are ineligible to work in the U.S.: Fines up to \$3,000 per employee and/or six months in prison.
- Employers who knowingly accept fraudulent documents: Fines of \$375-\$3,200 (first offense) and \$3,200-\$6,500 (subsequent offenses).
- Employers who help prepare, file or assist others in preparing or filing falsely made or fraudulent documents: Fines of \$275-\$2,200 for each employee (first offense) and \$2,200-\$5,500 for each employee (subsequent offenses).
- Employers who are participants in the government's electronic employment eligibility program who fail to notify the DHS of the inability to confirm an employee's eligibility: Fines of \$550-\$1,100.
- Employers who discriminate against individuals based on their nation of origin or citizenship status: Fines of \$375-\$3,200 per individual discriminated against (first offense), \$3,200-\$6,500 per individual discriminated against (second offense) and \$4,300-\$16,000 per individual discriminated against (subsequent offenses).

The final revised form and updated Employer Handbook is available through the USCIS at www.uscis.gov.

About Extensis Group, LLC

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