

TIPS FOR HANDLING I-9S

When I ask clients about their I-9s, I get one of two reactions: a blank stare followed by “what are those;” or a series of other questions. This short article should help answer some of those questions and, in the process, take care of those blank stares.

The Immigration Reform and Control Act made all U.S. employers responsible for verifying the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. All employers are required to complete Employment Eligibility Verification forms (Form I-9) for all employees hired after November 6, 1986. All employees include both U.S. citizens and non-citizens.

While the U.S. Citizenship and Immigration Services (ISCIS) is *probably* not going show up demanding to see your I-9s, it is still the law. It is important to make sure you are compliant should a government agency want to see them as immigration and Homeland Security laws are ever changing.

Penalties for noncompliance can be high. Poor documentation can cost you \$1,000 per worker in fines. Knowingly hiring a person not authorized to work in the United States can result in a fine of \$10,000 per worker.

Follow these simple rules and you’ll have nothing to fear:

1. Require all new hires to complete and sign Section 1 on their first day of work. You technically have three days to have your new employee complete their I-9 but don’t put it off – do it on the first day they begin work.
2. Don’t ask an applicant to complete an I-9 prior to making an offer of employment. Un-hired candidates can use I-9 information to allege that you discriminated against them.
3. Examine each employee’s original (not photocopies of originals – except a certified copy of a birth certificate) documents and make sure they’re on the I-9’s list of acceptable documents (find that list with the I-9 Form). Determine that they reasonably appear on their face to be genuine and relate to the person presenting them. Employers are not required to be document experts and are held only to a reasonableness standard.
4. Do not specify which documents the employee should give to you. Present them with the list and allow them to give you the documents of their choice. You may accept an expired US Passport or an expired document from List B (those which establish identity) but you may not accept any other expired document.
5. Fill out section 2 recording the name and identifying number of each document in the proper column (A or B and C) within 3 days of the employee’s first day of actual work. Keep a tickler file to follow up on expiring documentation. You do not have to re-verify identification documents such as driver’s licenses (those documents listed in Column B).

6. Be sure to sign the certification. The person who actually examined the original documents must sign the certification.
7. Make and retain copies of all I-9 documentation provided to you. This isn't mandatory, but it's a good idea. However, be consistent. If you make copies, do so for every employee; if you do not make copies, don't make them for anyone.
8. All current employees (unless exempt) must have I-9 forms on file. Keep I-9s and copies of documents for three years after the employee's hire date or one year after his termination date, whichever comes later. A retention date can only be determined at the time of termination. It is determined by calculating and comparing two dates. To calculate date A, add three years to the hire date. To calculate date B, add one year to the termination date. The employer must retain the employee's form until the later of the two dates.
9. Upon request, all I-9 forms subject to the retention requirement must be made available in their original form or on microfilm or microfiche to an authorized official of the Bureau of Immigration and Customs Enforcement, Department of Labor, and/or the Justice Department's Office of Special Counsel for Unfair Immigration-Related Employment Practices. The official will give the employer at least 3 days advance notice before the inspection.
10. Don't put the I-9 form in an employee's personnel file. To protect your company against possible discrimination claims, keep the I-9 and all supporting documents in a separate file. Be sure that file is kept confidential and in a locked cabinet or drawer.

You may obtain a copy of the Form I-9 at <http://www.uscis.gov/files/form/i-9.pdf>.

This should help allay any fears you may have about the Form I-9 and how to become and remain compliant. If you have any further questions, please feel free to contact me at sstull@pomsassoc.com.

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