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HR411® Tip of the Week

I-9 Forms: Test Your Knowledge

All employers are required to complete and retain a Form I-9 for each newly hired employee. Employers often have questions relating to the Form I-9 and to employment eligibility verification more generally. The following provides answers to some common questions addressing your obligations to complete and retain the I-9 form: The following provides an overview of each agency's position as well as best practice guidance for employers:

Q: What is the Form I-9?

A: The Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the United States. All employers must ensure proper completion of the I-9 form for each new hire. Both employees and employers (or authorized representatives of the employer) must complete the form. On the form, an employee must attest to his or her employment authorization (Section 1). The employee must also present acceptable documents demonstrating their identity and employment authorization. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and to relate to the employee. Then, the employer must record the document information on the form (Section 2). A list of acceptable documents can be found on the last page of the form.

Q: What is the deadline for completing the Form I-9 for a new hire?

A: Employers must complete Section 1 of the I-9 form by the end of the employee's first day of work for pay. Employers must complete Section 2 within 3 business days following the first day of work for pay. For example, if an employee begins work on a Monday, Section 2 of the form must be completed by Thursday.

Q: Where do I send completed Form I-9s?

A: Employers do not file the I-9 form with any agency. However, the form must be made available for inspection by authorized U.S. Government officials from the Department of Homeland Security (DHS), Department of Labor, or Department of Justice. For this reason,

it is a best practice to retain all I-9 forms together in one file. Employers are required to retain the completed Form I-9 for at least three years following the employee's date of hire or for one year following separation from the company, whichever is later.

Q: Some of our new employees aren't able to understand and complete the English version of the Form I-9. What can we do?

A: If an employee is unable to complete Section 1 without assistance or if the employee needs the form translated, someone may assist him or her. The preparer or translator must read the form to the employee, assist him or her in completing Section 1 and have the employee sign or mark the form in the appropriate place. The preparer or translator must then complete the Preparer and/or Translator Certification Block found within Section 1 of the form.

Note: There is a Spanish version of the Form I-9, but it may be filled out by employers and employees in Puerto Rico ONLY. However, Spanish-speaking employees in other locations may print the Spanish version for their reference, provided they complete the English version of the form. Both versions are available for download in the Forms & Documents section of HR411's HR Library.

Q: Do I need to fill out a Form I-9 for independent contractors?

A: The requirement to complete the I-9 form extends to employees only. Employers should not complete an I-9 form for a bona fide independent contractor. Also exempt are persons who are employed by a contractor providing contract services (e.g., temporary agencies), casual domestic workers working in a private

home on an irregular basis, and individuals who are not physically working on U.S. soil.

Q: Can I fire an employee who fails to produce the required documents within three business days of his or her start date?

A: If an employee fails to produce the required document or documents, or an acceptable receipt for a document, within three business days of their first day of work for pay, the employer cannot continue to employ the employee.

Q: Can I require new hires to present certain documents from the I-9 form's list of acceptable documents?

A: No. The employer may not require the employee to present certain documents in order to verify employment eligibility. The employee has the right to choose which documents to present, provided they are on the I-9's List of Acceptable Documents (see the last page of the form).

Q: What is my responsibility concerning the authenticity of document(s) presented to me?

A: You must examine the document(s), and if they reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them. To do otherwise could be an unfair immigration-related employment practice. If the document(s) do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

Q: What happens if I properly complete and retain a Form I-9 and DHS discovers that my employee is not actually authorized to work?

A: If you can show that you have, in good faith, complied with Form I-9 requirements, then you generally will not be subject to penalties, unless the government can show that you had actual knowledge of the unauthorized status of the employee.

Q: A new hire said his documents were stolen. He presented me receipts for the replacement documents. Can I accept these?

A: A valid receipt for a replacement of a new hire's lost, stolen, or damaged document is valid for 90 days from the date of hire. By the end of the 90 days, the employee must present you the actual document for which the receipt was issued.

Q: How do I complete Section 2 of the Form I-9 for an employee who has presented an acceptable receipt of a replacement document?

A: When the employee provides an acceptable receipt, enter the document title in Section 2, enter the word "receipt" and its document number in the "Document #" space, and enter the last day that the receipt is valid in the "Expiration Date" field. When the employee presents the actual document, cross out the word "receipt" and any accompanying document number and expiration date, insert the number from the actual document presented, and initial and date the change.

Q: We want to hire an individual for only two days. Must we still complete a Form I-9 for this employee?

A: Yes, you must still complete and retain a Form I-9, but there are two slightly different rules. For new employees who will work fewer than three business days, Section 1 and Section 2 must be fully completed by the employee's first day of work for pay. Additionally, receipts of verification documents are never acceptable if employment will last fewer than 3 business days.

Q: Am I required to photocopy an employee's I-9 documentation?

A: In general, there is no requirement for employers to make photocopies of the documentation provided by an employee to establish his or her identity and work authorization. However, if you do retain copies, you must do so consistently for all new hires. Photocopies should be kept with the employee's I-9 form.

Note: If you participate in E-Verify and the employee presents a document used as part of Photo Matching (currently the U.S. passport and passport card, Permanent Resident Card (Form I-551) and the Employment Authorization Document (Form I-766), you must retain a photocopy of the document.

Q: My new employee presented two documents, each containing a different last name. The employee explained that she had just gotten married and changed her last name. Can I accept the document with the different name?

A: You may accept a document with a different name than the name entered in Section 1 provided that you resolve the question of whether the document reasonably relates to the employee. You also may wish to attach a brief memo to the form stating the reason for the name discrepancy, along with any supporting documentation the employee provides. An employee

may provide documentation to support his or her name change, but is not required to do so. If, however, you determine that the document with a different name does not reasonably appear to be genuine and to relate to her, you may ask her to provide other acceptable forms of documentation found on the last page of the I-9 form.

Q: What do I do when an employee's employment authorization expires?

A: To continue to employ an individual whose employment authorization has expired, you will need to re-verify him or her using Section 3 of the I-9 form. Re-verification must occur no later than the date that employment authorization expires. You may want to establish a calendar call-up system for employees whose employment authorization will expire and provide the employee with at least 90 days' notice prior to the expiration date of the employment authorization. During the re-verification process, the employee must present a document from either List A or List C that shows either an extension of his or her initial employment authorization or new employment authorization. You must review this document and, if it reasonably appears on its face to be genuine and to relate to the person presenting it, enter the document title, number, and expiration date (if any), in Section 3 and sign in the appropriate space. Note: You may not re-verify an expired U S passport or passport card, an Alien Registration Receipt Card/Permanent Resident Card (Form I-551), or a List B document that has expired.

If the version of the I-9 that you used for the employee's original verification is no longer valid, you must complete Section 3 of the current I-9 form upon re-verification and attach it to the original I-9 form.

Q: There is a mistake on one of my employee's Form I-9. How can I correct it?

A: The preferred way to correct an I-9 form is to line through the portions of the form that contain incorrect information, and then enter the correct information. Initial and date your correction.



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