

TECHNICAL ASSISTANCE – EMPLOYMENT ELIGIBILITY VERIFICATION FORM I-9

Prepared by the Division of Human Resources in the Department of Personnel & Administration.
Revised September 25, 2008.

GENERAL

The Immigration Reform and Control Act (IRCA) of 1986 was passed to help control illegal immigration, with the belief that by making it more difficult for unauthorized aliens to get work, they would be less likely to enter the United States. IRCA placed a responsibility on employers to determine employment eligibility for each newly hired employee.

The IRCA was initially enforced by the Immigration and Naturalization Service (INS), but has recently been transitioned to the newly created Department of Homeland Security (DHS). The DHS bureau, U.S. Citizenship and Immigration Services (USCIS), oversees compliance.

The IRCA requires all U.S. employers to verify evidence of identity and employment eligibility of all newly hired employees. Within three business days of an employee's first day of employment, the employer must view acceptable documentation and the employee and employer must complete the Employment Eligibility Verification form (Form I-9). The employer, not the employee, is responsible for ensuring that the Form I-9 is timely and properly completed.

Completed Form I-9s are kept on file by the employer and made available for inspection by authorized U.S. Government officials (i.e. Immigrations and Customs Enforcement or Department of Labor).

DEFINITION OF AN EMPLOYEE

The Form I-9 must be completed for all newly hired employees. Even though U.S. citizens and nationals are automatically eligible for employment in the U.S., they also must provide proof of employment eligibility. An employee must complete Section 1 of the Form I-9 on the first day of employment and provide appropriate identity and employment eligibility documentation within three business days of the date employment begins.

For I-9 purposes, a person is hired when he or she begins to work for an employer for wages or other compensation; not necessarily when a job offer is made or accepted. Other compensation includes anything of value in exchange for labor rendered by an employee, such as lodging and food. Therefore, volunteers may be classified as an employee for employment eligibility purposes if they are receiving some type of non-monetary compensation.

Employers do not need to complete Form I-9s for employees hired prior to November 6, 1986, who have continued employment, independent contractors, or persons who provide labor through a contractor providing contract services.

OBTAINING THE FORM I-9

The current version of the Employment Eligibility Verification form (Form I-9) is available on line at <http://www.uscis.gov/files/form/I-9.pdf>. The form was most recently revised on June 5, 2007. The major change to the document was to remove 5 List A documents that are no longer valid and to add one list A document to the list. Employers are allowed to make photocopies of this document, as long as both sides of the form are copied. The instructions must also be available to all employees completing the form.

COMPLETING THE FORM I-9

There are three sections of the Form I-9. The employee completes Section 1, and the employer completes Sections 2 and 3.

Section 1 (Employee)

- *Demographics.* The employee must indicate name, address, date of birth, and social security number.
- *Eligibility Classification.* An employee must indicate whether he or she is a citizen or national, a lawful permanent resident, or an alien with a temporary work authorization. Citizens include persons born in the United States, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island.
- *Signature and Date.* The employee must sign and date Section 1 with the current date.
- *Preparer and/or Translator Certification.* This part should only be completed and signed if someone other than the employee prepared the employee's section.

Section 2 (Employer)

- *Employer Review and Verification.* The employer must examine the acceptable identity document(s) and complete the form by recording the document's title, issuing authority, document number, and expiration date (if any).
- *Certification.* The employer must verify the employee's first date of employment, certify completion of the employer's information, and date the form.

Section 3 (Employer – updates and reverification only)

- *Block A.* This part is for name changes only.
- *Block B, Signature and Date.* Employees rehired within three years, who are still eligible to work in the U.S. on the same basis as when initially hired, should complete this part.
- *Block B, C, Signature and Date.* This part must be completed for: (1) employees rehired within three years, whose initial work eligibility status has changed, or (2) current employees whose work authorization is about to expire (reverification).

ACCEPTABLE DOCUMENTATION

The Form I-9 lists acceptable documents that can be used to show identity and eligibility to work in the United States. An employer may not restrict this list or require seeing particular documents; the employee shall choose from the entire list of acceptable documents. Although a Social Security card is not required for Form I-9 requirements, each agency must obtain a copy of the employee's Social Security card for other payroll requirements. Additional information on payroll requirements can be obtained from Central Payroll or the State Controller's Office.

An employee may either choose to provide one document from List A (which establishes both identity and employment eligibility), or choose two documents - one from List B (which establishes identity) and one from List C (which establishes employment eligibility). Only original documents are allowed; copies are not acceptable, with the only exception being a certified copy of a birth certificate.

Effective January 1, 2007, employers are required to retain a photocopy of the documents provided by the employee that show their identity and work eligibility, these forms must be stored with the completed Form I-9s.

If an employee does not have acceptable original documents, he or she must apply for any needed replacement documents, and provide the receipt for the replacement document(s) within the initial three-day period. In addition to providing the initial receipt, the employee must produce the actual replacement document for the employer within 90 days.

AUTHENTICITY OF DOCUMENTS AND GOOD FAITH DEFENSE

Employers must examine all provided identity and employment eligibility documents to see if they reasonably appear on their face to be genuine and related to the employee. If so, the documents must be accepted. However, if a document does not reasonably appear genuine, or if it does not appear related to the employee presenting it, an employer must refuse the document. This can ultimately eliminate the employee's eligibility for employment.

As long as employers act in this manner, they will have "good faith" defenses against penalties and sanctions, in the event employees provide false or altered documents or are unauthorized aliens. Employers have good faith defenses unless they knowingly hire unauthorized aliens and have actual knowledge of the unauthorized work statuses of employees.

HOUSE BILL 06S-1017

Effective on or after January 1, 2007, each employer in the state of Colorado shall affirm that the employer has examined the legal work status of each newly-hired employee and has retained file copies of the documents provided by the employee as proof of identity and proof of employment eligibility. An Employment Verification Affirmation Form (attached) affirming that the documents provided were examined and that those documents will be retained for the term of the individual's employment must be completed by the employer. This form must be stored with the completed Form I-9 and supporting documents. The affirmation form must be completed within 20 days of hire but it is recommended to complete the form at the same time the Form I-9 is completed, within three days of hire.

Employers who fail to complete the Employment Verification Affirmation Form or submit false or fraudulent documentation shall be subject to a fine of not more than \$5,000 for the first offense and not more than \$25,000 for the second and any subsequent offense.

EMPLOYEE TRANSFERS

In the event of agency-to-agency transfers, a new Form I-9 must not be completed. The transferring employee's Form I-9 must be included along with the employee's personnel file for transport to the new location. Upon arrival of the personnel file at the new location, the Form I-9 must be removed from the file and placed in the Form I-9 files for that agency. The employee's initial Form I-9 must follow him or her during any movement within the State of Colorado personnel system. This is not a change in federal law, rather a procedural change for the State and applies to all employee transfers from this point forward.

Agencies are not required to complete a Form I-9 for employees hired before November 6, 1986. If an employee hired before November 6, 1986 transfers to a different agency and has been continuously employed by the State of Colorado, no Form I-9 should be on file.

UPDATES AND REVERIFICATION

Employers must complete Section 3 of the Form I-9 when updating and/or re-verifying the form. If the employee has a temporary work authorization when hired, employment eligibility must be re-verified on or before the expiration date of this authorization. Similar to the new hire process, employers may not specify which document(s) they will accept.

The original Form I-9 must be re-verified, and Section 3 completed, if an employee is rehired within three years of the date the original form was completed. Provided that an employee's eligibility status is the same as when initially hired, that employee does not need to complete a new Form I-9.

Employers are not required to keep track of employee name changes on Form I-9. However, if an employee requests to change their name on their Form I-9, the employer must use Block A of Section 3 to change the form. Any changes to the Form I-9 need to be verified with documentation as required with the initial Form I-9 completion.

It is not necessary for employees to complete new Form I-9s just because the USCIS releases a new version or edition of the form.

FAILURE TO PRODUCE DOCUMENTATION

Employers must examine evidence of identity and employment eligibility and complete Section 2 of the Form I-9 within three business days of the date employment begins. If an employee is unable to present the required document(s) within three days, he or she must present a receipt for the application of the document within this initial three-day period. In addition to providing the initial receipt, the employee must produce the actual replacement document for the employer within 90 days.

While the submission of the information required in the Form I-9 is voluntary, an individual may not continue employment unless this form is completed. Employers are subject to civil or criminal penalties if they do not comply with the IRCA.

CPPS SYSTEM ENTRY

Agencies are required to enter the expiration date(s) of the Form I-9 documentation in the Personal Data screen of CPPS. To ensure consistency, the expiration date of 99/99/9999 should be entered for all U.S. citizens or nationals. For all other work authorization statuses, the expiration date entered should reflect 30 days prior to the document's actual expiration date. This applies to permanent resident aliens, as well as employees with other Form I-9 statuses.

RECORDKEEPING AND FILING

Agencies keep completed Form I-9s on site; the forms are not to be forwarded to the DHS or the USCIS. Agencies must retain Form I-9s for either three years after the date of hire or one year after the date employment ends, whichever occurs later. Effective for employees hired on or after January 1, 2007, the Employment Verification Affirmation Form (attached) "*and*" a photocopy of the documents provided by the employee that proves their identity and work eligibility must also be retained with the employee's Form I-9.

Although not required, it is suggested that completed forms be kept separately from an employee's personnel file. Commonly, Form I-9s are kept together alphabetically in a separate file. Generally, employers are given only three days notice for a Form I-9 audit by the government. Given that short timeframe, it is better to have easy access to the I-9s, rather than having to go through all of the personnel files to locate them.

NON-U.S. CITIZENS

For employees who are not U.S. citizens or nationals who have entered an “authorization to work until date” in Section 1, it is recommended that a separate dated file be maintained. These files must be updated at least thirty days prior to the expiration date of the employee’s expiring “authorization to work until date”. The employee must provide new documentation with an extended authorization date. The employer then completes Block C of Section 3 of the original Form I-9 with the updated information. For changes made on or after January 1, 2007, the Employment Verification Affirmation Form (attached) “*and*” a photocopy of the documents provided by the employee that proves their identity and work eligibility must also be retained with the employee’s Form I-9.

ADDITIONAL INFORMATION

The USCIS has released a *Handbook for Employers*, which includes detailed information about the employment eligibility process, and answers to frequently asked questions. The handbook can be found on line at www.uscis.gov/files/nativedocuments/m-274.pdf.

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to the *State Personnel Board Rules and Director’s Administrative Procedures* or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.



EMPLOYMENT VERIFICATION AFFIRMATION FORM

Employee Name: _____

Date of Hire: _____

On behalf of the State of Colorado, I affirm the following, with respect to the above-named individual:

1. I have examined the employee's work authorization documents as required by the Immigration Reform Control Act of 1986;
2. I have retained file copies of the documents which the employee has presented as required by 8 U.S.C. § 1324a;
3. I have not altered or falsified the employee's identification documents; and
4. The State of Colorado has not knowingly hired an unauthorized alien.

This affirmation will be retained for the term of the above-named individual's employment.

Name of Employer Representative

Signature of Employer Representative

Date

Attach this form to Form I-9 and supporting documentation for filing

**TECHNICAL ASSISTANCE
DHR APPROVAL FOR PUBLICATION**

Technical Assistance Topic: Employment Eligibility Verification
Form I-9

Effective Date of Revisions: September 25, 2008

Date of Superseded Version: November 14, 2006

Section Manager: Laurie Benalco Date: 9/24/08

Deputy Division Director: Thomas Montoya Date: 9/24/08

Division Director: [Signature] Date: 9/24/08