

The Form and Its Function: I-9 Forms

By Lesley Sifers, Tax Favored Benefits, Inc.

Two issues recently made the news: 1) a major increase in the Federal minimum wage and 2) the introduction of legislation to beef-up enforcement of immigration procedures. Is there a connection here? Did those farsighted visionaries in Washington realize that increasing the minimum wage (it will be \$7.25 per hour by July, 2009) might actually encourage some employers to hire MORE illegal aliens? Is it a coincidence that lawmakers are discussing ways to toughen the rules and procedures that you must follow?

Isn't that just like those visionaries? Always thinking of ways to let you help them get the job done and then fine you (even arrest you) if you don't get it just right. It's not like you haven't been helping for the past twenty years – that's about how long the I-9 form has been around.

It seems like a good time to review your I-9 process and procedures to be sure you have it down pat – before any new requirements are added.

Legal hiring begins during the interview. Ask EVERY applicant if they are legally authorized to work in the United States, even if you are 100% sure they are. Don't ask about place of birth or national origin, those questions are illegal. Tell applicants they are required to supply documentation proving identity and legal work status. If an applicant has questions, give them a blank I-9 form. There's a list of acceptable documents on the back of the form.

Two kinds of documentation are required to complete an I-9 form properly. One document proves identity. This includes a photo ID, such as a driver's license or state-issued ID card. Another document proves eligibility to work in the United States. This can be a birth certificate or Social Security card. A U.S. passport serves both purposes. A non-citizen, legally able to work in the United States, should be able to present specific eligibility documents.

Only accept ORIGINAL documents.

Metal or plastic social security cards are not valid for eligibility. Make sure the documents presented are ones listed on the back of the I-9 form.

Obtain a completed I-9 form on every employee within three (3) days of their start date. If you don't have it, you cannot keep the person on payroll. In my experience, some people do not have the original documents required. It is, technically, acceptable to allow a person to work if they have proof that they have applied for new documents. However, I would hesitate to do so. Better to tell them they cannot start work until they actually have original documents.

Make copies of the documents you examined and attach them to the completed I-9 form – even if it's not required in your state. While Federal rules do not require you to make copies of the documents you examined, a few states do.

Maintaining I-9 forms can get tricky. **Do not store I-9 forms in personnel files.** There are two reasons to keep them separate. First, the form contains information about national origin. Second, if you are audited by an agency like the Department of Labor, anything in the personnel file is open to examination. If they spot anything irregular on an I-9, it could lead to a wider audit.

Store forms for current employees in alphabetical order in a binder(s). Store the binder in a secure place. Remember, you must have an I-9 on every employee – even if they were working for you before the law became effective.

Flag any I-9 form that includes an eligibility document with an expiration date. That includes passports, work permits, visas, etc. The I-9 must be updated when such documents expire. Obtain a new form and attach it to the original I-9 form. NEVER alter or make corrections on an I-9 form. Identity documents, such as a driver's license, do not need to be updated when they expire.

When an employee leaves, move the I-9 to a separate binder kept in date order. You must keep I-9s for one year after an employee leaves. Shred these documents when the retention period is over.

Train certain staff to obtain and maintain your I-9 forms and allow only that person(s) to handle the process. Centralizing responsibility will improve consistency in the process and prove beneficial if you are audited by a federal or state agency.

Conduct an annual self-audit. This can be completed by a third-party or someone not involved in the day-to-day I-9 process.

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) enforces immigration laws. In 2006, ICE set new records for enforcement. Over 700 people (employers and employees) were arrested on criminal charges. More than 3,000 individuals were arrested on administrative charges. This is seven times the total number of arrests in 2002, the last year the Immigration and Naturalization Service (INS) was in operation. Even if you don't get arrested, fines run upwards of six digits.

An ICE official said, "No matter how large or small the company, ICE has no tolerance for individuals who use illegal aliens in their workforce." A solid I-9 process could help you avoid accidentally hiring illegal aliens and the punishment that goes with it.

Just a reminder, the new minimum wage went into effect on July 24, 2007. Be sure your federal posters have been updated and check to see if your state has additional requirements.

Thank you for reading this article. If you have comments or questions about this topic, please call the HR Help Line at 800-683-3440 or e-mail lesley@taxfavoredbenefits.com. ■