

The Paper Chase – Employment Documents & Forms

Part I: The Application Form

By Lesley Sifers, Tax Favored Benefits, Inc.

Sometimes I wonder whatever happened to that “paperless office” I was promised when I bought a computer. Hardly anything generates more paperwork than the employment relationship. Starting with pre-employment to post-hire and finally termination, you will collect reams of documents and forms. Some (like I-9 forms) are requirements. Others (like the application form) are tools you can use. Let’s start at the beginning with the application form.

A well-designed application form remains the foundation of a personnel file. It contains much of the basic employment information you are required to collect – name, address and social security number (SSN). An effective application form can also protect you from future problems if it contains appropriate notices and releases. Even though an applicant or recruiting agency may provide resumes or job history information, these documents (including those from your local unemployment office) are not designed for your protection. Resumes only provide what an applicant wants you to know with the best possible “spin.” You should only accept such documents as supplements to your application form.

In addition to the basics (name, address, phone number and SSN), the application form collects information about employment history, past wages, reason(s) for leaving a job, the direct supervisor’s name and more. A good form will ask for:

- Last several jobs held
- Address and phone of previous employer(s)
- Supervisor or other contact name
- Rates of pay (starting & final)
- Reason(s) for leaving
- Educational history
- Personal references
- Felony convictions

The form should also include appropriate disclaimers, notices and releases:

- Length of time application is valid (usually 3 to 6 months)
- Release allowing you to verify information and obtain references
- Your right to terminate for discovery of false/fraudulent information
- Information about employment eligibility (I-9) and drug testing
- Employee signature indicating they have read and understand such notices, releases

A legal application form will **NOT** ask for:

- Date of birth
- Gender, race or marital status
- Religious affiliations
- Medical information

Make sure *every* applicant you interview completes *your* application form. Do not accept generic forms or another company’s application. In addition, do not allow application forms to be removed from your facility. If you do, you won’t know who completed the form, if the applicant can read or write, or if

your form is being copied and submitted elsewhere. However, if an applicant divulges a handicap such as dyslexia, you may need to make an accommodation. For example, ask them to bring someone with them to help complete the form or provide on-site assistance.

Obtain the application form before the interview. Since this is the first task you will ask a potential employee to complete, make your expectations clear. Show the applicant the form – calling attention to the releases and the signature line and explain what you expect:

“Please fill out this application form as completely as possible. If you can’t recall something or if you believe a question doesn’t apply – indicate that with a “?” or “N/A.” There is important information on the back of the form that you should read. There is also a space for your signature. Please be sure to read and sign the back of the form.”

When the applicant turns in the form, check it over for completeness and ask about any items left blank. Do not fill in the blanks. Ask the applicant to add any subsequent information in his/her own handwriting. In fact, you should not write on application forms – use a separate sheet of paper for your interview notes.

Occasionally, an applicant enters such comments as “see resume” or “will explain” in the employment history area. Keep in mind that information excluded from the form will not be covered by your releases. In other words, if the resume is later discovered to be a fabrication or if the explanation is a lie, you may not be protected by your releases. Ask the applicant to complete the information on the form. If they object, consider it a red flag.

Used properly, the application form remains an invaluable tool. It helps you develop interview questions and indicates basic literacy, legible handwriting, attention to detail and the ability to follow instructions. Anyone who objects to completing the form or makes an excuse (“I already gave you my resume.”) might also carry that attitude on the job. And, an applicant who takes forever and hands you a sloppy, incomplete form may approach the job in the same manner.

Application forms for those hired should be retained in personnel files. For those not hired, you must maintain applications for one year. Be scrupulous about disposing out-dated applications. Discrimination in hiring remains one of the top areas investigated by the Equal Employment Opportunity Commission (EEOC). If you are conscientious about maintaining application forms, you may be able to limit the scope of an EEOC investigation to the preceding 12 months.

For a review of your application form, please fax a copy to Lesley Sifers at 913-648-6798. If you would like a source for good forms, call the Tax Favored Benefits, Inc. HR Helpline at 800-683-3440.

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Part II: The I-9 Form

By Lesley Sifers, Tax Favored Benefits, Inc.

The Immigration Reform and Control Act of 1986 (IRCA) was originated to help prevent businesses from employing people who are in this country illegally. The Act not only requires employers to

complete an I-9 form for all persons hired, but also specifies that employees must provide documents intended to verify both their IDENTITY and ELIGIBILITY to work in the United States. While the I-9 instructions remain a good guide to basic compliance, they don't cover every question employers might have.

Here are some basic requirements for the I-9 form:

- An I-9 is only required for people actually hired, not for every job applicant.
- An employee must produce documents within three business days after hire.
- An employee whose documents have been lost, stolen or destroyed must (within three business days) supply proof of application for replacement documents. Then, they are required to produce the documents within 90 days.
- Employers cannot retain an employee who fails to produce required documents within the specified time limits.
- With the exception of a certified copy of a birth certificate, employers cannot accept photocopies of documents. Only original documents remain valid.
- While businesses are permitted to photocopy documents – **DON'T DO IT!** It is the employer's responsibility to examine documents to determine if they "reasonably appear to be genuine." Copies of documents can turn into "smoking guns" during a compliance audit.
- A Social Security card that is laminated, metallic or bears the statement "Not Valid for Employment" is *not* an acceptable document.
- Some eligibility documents have expiration dates. Often, legal aliens present work permits, visas, foreign passports, etc. – all which must be re-verified when they expire.

Businesses are not required to file I-9s with any federal agency – they just need to complete the forms and keep them on file. The IRCA is primarily enforced with audits conducted by the Immigration and Naturalization Service (INS). However, the Department of Labor (DOL) and Internal Revenue Service (IRS) can audit I-9s in conjunction with any other type of audit. That is why this form should remain separate from other personnel records.

Fines are levied for paperwork violations. However, if a business actually employs an illegal alien and the documents provided at hire looked "reasonably genuine" and they completed the I-9 correctly, they won't be fined. (The business will still have to terminate the employee.) On the other hand, businesses that do not have I-9s, have incorrectly completed I-9s or have not re-verified expired documents will be fined – possibly a hefty sum.

Employers are required to retain I-9s for three years from the date of hire or one year from the date of termination – whichever is longer. If an employee terminates with more than three years of service, the form can be destroyed immediately. However, if an employee had less than three years service, the form

should be retained for one year following termination. Keep these timeframes in mind when an employee leaves and do not retain the I-9 form any longer than required.

Businesses may keep the forms longer for current employees if they wish, although an I-9 audit will probably not request forms more than three years old. Keep in mind, all I-9 forms for current employees filed together will remain fair game. Segregating I-9s by year of hire will enable businesses to quickly produce only those forms for employees hired over the last three years.

Businesses must re-verify eligibility documents that have expired. Generally, these include work permits, visas, foreign passports, etc. Employers are encouraged to set-up a system to alert them prior to an expiration date. (It is not necessary to re-verify a driver's license because that document proves identity – not work eligibility.)

Additional information about I-9 requirements and copies of the I-9 form with instructions from the INS can be obtained at www.ins.gov. An employer's guidebook is also available at area INS offices. (Locations are listed on the website.)

The I-9 requirement has been law for more than ten years, so most new hires know they will need to produce certain documents. It should raise a red flag if someone cannot or will not provide the necessary documents.

If you have specific questions about I-9 requirements, call Lesley Sifers at the Tax Favored Benefits, Inc. HR Helpline at 800-683-3440.