

Employer Work Authorization Verification

NELP

Fact Sheet for Workers

Advocating for the working poor and the unemployed

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Why do I have to provide documents to my employer demonstrating that I am allowed to work in the U.S.?

In 1986, Congress enacted the Immigration Reform and Control Act of 1986 (IRCA). IRCA made it unlawful for any employer to *knowingly* hire a worker who is not authorized to work in this country.

Employers are required to verify the identity and employment eligibility of all employees hired after November 6, 1986, and to complete a special government form-called an Employment Eligibility Verification Form or an "I-9 form" for short-for each new employee hired.

What is the I-9 form?

- The I-9 form, which is issued by the INS, contains three sections.
- **Section 1** of the I-9 is completed by the employee and requires that he or she sign the form *under penalty of perjury*. The employee must supply his or her name, address, date of birth, Social Security number and check a box indicating whether he or she is a U.S. citizen, a lawful permanent resident, or an alien authorized to work in the U.S.
 - **Section 2** requires the employer to list the documents that were produced by the employee to verify his or her identify and employment eligibility.
 - **Section 3** entitled, "Updating and Reverification," is used by the employer to update employee information and to re-verify the employment eligibility of employees, who, when they first completed the I-9 form, presented documents showing that their work authorization would expire on a certain date.

Can my employer tell me which documents to show to establish my identity and work authorization?

No. The I-9 form contains a list of the documents that are acceptable for establishing an employee's identity and employment eligibility. You, not your employer, have the right to choose which documents to show to your employer. An employer's request for "more or different documents" than are required, or a refusal to accept certain documents that appear "reasonably genuine" and "relate to the person presenting them" may violate the law.

When do I have to show identity and employment eligibility documents to my employer?

In general, you must be allowed three business days from the time you are hired to produce documentation. Also, you do not have to produce any documents until you actually have been hired for a position, unless all workers are asked to do so at the same point in the hiring process.

What if I lost my work authorization card? If you lost a document necessary to establish your identity or employment eligibility, your employer must accept a receipt (issued by the appropriate government agency) showing that you have applied for a replacement document. In addition, your employer must give you up to 90 days from the date of hire (or from the date your work authorization expires for reverification purposes) to provide a valid original document.

Is my employer required to keep my documents? **No.** Your employer does not need to keep your original documents. You should not agree to give them to your employer.

Does my employer give my documents or the I-9 form to the INS? No. However, your employer is required to keep completed I-9 forms on file for a specified period of time and must make them available for inspection, if requested, by the INS, U.S. Department of Labor (DOL), or the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

Once I have filled out an I-9 form, will I have to show documents to my employer again to re-verify that I am work authorized? In general, no. However, there are exceptions. Once you have completed an I-9 form, you are considered to be a "continuing employee," and thus are not required to fill out a new I-9 form or show your documents again while you are working for the same employer.

This is true even if you have had a change in your work status. For example, re-verification is not required if you :

- have been demoted or promoted,
- have taken approved unpaid or paid leave,
- were laid off due to lack of work,
- are on strike or involved in a labor strike.

An exception to this statement is when an employer is required by law to re-verify employees' documents.

When must an employer re-verify a worker's documents?

- When the information the employee provided on the I-9 form indicates his or her work authorization is about to expire.
- When the employer learns that the employee is not authorized to work.
- When the employer has been audited by the INS and informed that there are problems with some of its workers' documents.
- When an employer rehires an employee, the employer must inspect the I-9 form and determine that the form relates to the employee and that the employee is still eligible to work.

Can my employer tell me which documents to present during the re-verification process?

No. You still have the right to choose which documents to produce for the re-verification process.

Can my employer ask to re-verify my documents because I "appear foreign"? No.

An employer cannot single out only those employees who "appear to be foreign or immigrants" for re-verification. This could be considered document abuse, as well as possibly national origin or citizenship discrimination, depending on the facts.

Should my employer ask me to bring in proof that I am authorized to work because my name or Social Security number appeared on a Social Security Administration's no-match letter? No.

The receipt of a no-match letter, by itself, does not give employers notice that a worker is not authorized to work. Thus, a letter from SSA, without more, does not warrant an employer's request that you or other employees listed on the letter bring in your Social Security cards or other immigration-related documents. Indeed, employers who require employees to re-verify their work authorization based only on the receipt of a no-match letter may be violating the law.

What can I do if I believe that my employer violated my rights when I completed the I-9 form or my employer engaged in unlawful re-verification practices?

- ✓ You should contact an advocate for immigrant workers in your community or other trusted community organization.
- ✓ If you work in a unionized workplace, you should contact your union. They can determine if your rights have been violated and assist you in seeking redress with the appropriate government agency.
- ✓ You can also contact the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), the government agency that assists workers, unions, and other advocates for employees, along with employers and the general public on matters involving employment discrimination. OSC is not part of the INS. It is part of the U.S. Department of Justice's Civil Rights Division and has multilingual staff and attorneys. For information or assistance workers may call the OSC's toll-free hotline at (800) 255-7688 or (800) 362-2735 (TDD for hearing impaired).