

Form I-9

Under federal law, all employers—including the smallest of congregations—must have a form on file that verifies the employment eligibility and identity of each employee. The Immigration Reform and Control Act requires all U.S. employers to complete the Employment Eligibility Verification form (Form I-9) for all employees, including U.S. citizens.

Every congregation must have a Form I-9 in its files for each employee, unless the employee was hired before November 7, 1986, and has been continuously employed by the same employer.

Fines for failure to comply with Form I-9 completion and verification rules are substantial. Penalties for record keeping violations range from \$110 to \$1,100 per occurrence. Penalties for knowingly employing an unauthorized alien range from \$275 to \$11,000 per violation. Criminal penalties of up to \$3,000 in fines and imprisonment of up to six months are possible where a "pattern or practice" of knowingly employing unauthorized workers is demonstrated.

Newly hired employees must complete a verification form within three business days of hire.

It is illegal to discriminate against legal aliens based on citizenship status or national origin.

Do not ask an applicant to complete Form I-9 before the offer of employment. Why not? Form I-9 provides information on citizenship, national origin and visa status, which could serve as a basis for a claim of discrimination if the applicant is not hired.

Many documents will legally establish employment eligibility. Among these are a U.S. passport, driver's license, social security card, certified copy of birth certificate, and permanent resident card. There are other documents listed on the instructions which accompany Form I-9. Be careful to note in the instructions that sometimes one document alone will suffice and other times it takes two.

Requirements for completing Form I-9 are very exacting. For instance, Form I-9 is considered invalid if it has text scratched-through or hidden by correction fluid. Remember, this is a legal document. Think of it from the government's perspective; would you be suspicious if your aunt's will had streaks of correction fluid?

Copies of Form I-9 and complete instruction are available under "forms" on the government's Web site at www.immigration.gov

For Section 1 of Form I-9, the employee states whether he or she is a U.S. citizen, permanent resident or alien authorized to work.

- The new employee must complete and sign Section 1 on the date the employee begins work.
- The employer should immediately review Section 1 to make sure that it was properly completed and that the employee makes any necessary corrections.
- The employer may not ask for any document to substantiate the information in Section 1.

In Section 2 of the form, the employer will record which documents the employee presented to verify his or her status. By “employer,” this may be the pastor, the congregation council president, the business manager, or any employee or council member who might be seen as officially representing the congregation.

- The employer must complete this section within three days of the employee commencing work.
- Do not ask for any particular document for Section 2. Give the employee a Form I-9 and ask him or her to provide either one document from List A or one document each from both List B and List C.
- Do not accept photocopies in place of originals; you are certifying, “under penalty of perjury,” that you have examined the original document(s).
- The employer should accept any document specified on Form I-9, provided that it appears genuine and relates to the employee. However, if there is any question about the authenticity of the document(s) presented, do not accept them. Ask for alternate documents.
- Review the documents the employee provides to make sure that the documents are on list of approved documents for Section 2.
- The employer should review the information provided in Section 1 against the documents produced by the employee for consistency. Give the employee an opportunity to correct Section 1 if there is a discrepancy.
- It is recommended—but not required—that the employer make photocopies of the documents produced for Section 2. If you make copies, attach them to the Form I-9. Be consistent; either make copies for everyone or no one.
- Do not ask for or accept more documentation than is required by Form I-9. “Over-documentation” is prohibited under the antidiscrimination provisions of the law. “Best intentions” count for nothing.
- Be particularly careful when an employee shows you a filing receipt instead of an actual document. This is a tricky area. You should contact your lawyer if you have any doubts about the validity or acceptability of the documents submitted to you.

Do not complete Section 3, except when updating and/or reverifying the employee’s information. The instructions for Section 3 on Form I-9 are clear.

Other key points to remember with Form I-9:

- Follow the same I-9 procedures for all employees.
- Do not keep I-9 forms in the personnel files. If you are investigated by the Department of Labor or the Department of Homeland Security, it is much easier for these forms to be audited if they are kept together.
- Keep a tickler file for I-9s showing that employment authorization will expire at a certain date. Remind the employee of the need to renew his or her employment authorization at least 90 days before expiration of the current employment authorization.
- Do not ask for a government document to confirm the expiration date of work authorization. It is possible that the date a non-citizen is “authorized to work” will not appear on a document submitted for Section 2. Again, do not ask for more than the law allows.
- A Form I-9 should be on file for every employee. A Form I-9 does not need to be completed for truly independent contractors, e.g. contractors who spend only a few hundred hours per year working for the employer and who work off-site.
- Do not consider the expiration date of work authorization in making the hiring decision.

- The congregation must retain the I-9 for three years from the date of hire or one year after termination of the employment relationship—whichever is longer. A safer way of implementing this requirement is to keep Form I-9 for at least three years after the termination of employment.
- The employer is not required to be a document expert. If a document is one of the approved documents, and does not appear to have been tampered with or to be forged, the employer should accept it.

Congregations may incur steep fines for refusing to hire or discharging a protected individual because of national origin or citizenship, and requesting specific documents or rejecting apparently valid documents during employment eligibility verification for the purpose, or with the intent, of discriminating on the basis of citizenship or national origin.

There are also penalties for employers who demand specific documents or who demand more documents than required by the I-9. (This could have the effect of discriminating against one of the protected classes of job applicants.) An employer which demands more documents than the law requires, or rejects documents that "on their face appear to be genuine" may be subject to civil penalties ranging from \$110 to \$1,100 per individual discriminated against.