

Primer on Form I-9 Employment Eligibility Verification

López at Murphy
Desmond &
IMMIGRATION LAW

Background Information

Form I-9 Employment Eligibility Verification was created by Congress under the Immigration Reform and Control Act of 1986 (IRCA). In general, IRCA was intended to control unlawful immigration into the U.S. It also included provisions for the legalization of aliens already present in the United States.

Included under IRCA were new regulations affecting how employers verified whether their employees were legally authorized to work. The law created civil and criminal sanctions against employers who knowingly hired undocumented workers. IRCA also established Form I-9 in order for employers to document their employees' legal authorization to accept employment.

Since the implementation date of IRCA on November 6, 1986, all U.S. employers have been required to follow specific guidelines to verify the identity and employment eligibility of workers, including completing a Form I-9 for every single new hire.

Form I-9 must be completed for all employees, regardless of citizenship or nationality. That means that even U.S. citizens must complete Form I-9 when they are hired at any new job.

Completing Form I-9: Who is Responsible?

Form I-9 includes basic requirements for both the employer and the employee. However, the burden of accurately completing the form is mainly placed on the employer.

There are two sections to the form. Section 1 must be completed by the employee. The employee must complete this section of the form at the time of hire, **before** he or she actually begins working for pay.

Under the law, the employer is responsible for making sure that Section 1 has been properly completed by the employee and in a timely manner.

Section 2 must be completed by the employer within three business days of the employee's date of hire. The main feature of Section 2 is the section entitled, "Employer Review and Verification." The employer is responsible for examining the document(s) provided by the employee which evidence employment authorization and/or identity.

The employer must record notes on Form I-9 regarding which documents he or she examined. The employer also must retain I-9 records for an established period of time, as evidence of compliance.

There are very specific rules the employer must follow with regard to the examination of documents. The employer shall not tell the employee *which* documents he or she should present. The employer may only give the employee a copy of the "List of Acceptable Documents," as published by the U.S. Department of Homeland Security, Citizenship and Immigration Services (USCIS).

Compliance and Penalties

The two main prohibitions of I-9 law are:

- **Do not** hire, recruit, or refer for a fee, an alien you know is not employment authorized.
- **Do not** discriminate against applicants or employees based on their nationality, citizenship or immigration status.

There are strict penalties against employers for non-compliance with I-9 regulations if they knowingly hire individuals not authorized to work, and/or if they fail to properly complete or maintain I-9 records (even if the employees covered by the I-9 records are otherwise authorized to work in the U.S.).

See the following page for approximate fines, as outlined in the "I-9 Penalties for Employers" box.

(Continued on next page)

I-9 Penalties for Employers

Employing or recruiting an unauthorized alien:

- 1st offense: \$375-\$3,200 / worker
- 2nd offense: \$3,200-\$6,500 / worker
- 3rd offense: \$4,300-\$16,000 / worker

Discrimination against an employment-authorized individual

- 1st offense: \$375-\$3,200 / violation
- 2nd offense: \$3,200-\$6,500 / violation
- 3rd offense: \$4,300-\$16,000 / violation

Involvement in document fraud

- 1st offense: \$375-\$3,200 / worker
- 2nd offense: \$3,200-\$6,500 / worker
- 3rd offense: \$3,200-\$6,500 / worker

I-9 form violations

- 1st offense: \$110-\$1,100 / form
- 2nd offense: \$110-\$1,100 / form
- 3rd offense: \$110-\$1,100 / form

Document Abuse

- 1st offense: \$110-\$1,100 / form
- 2nd offense: \$110-\$1,100 / form
- 3rd offense: \$110-\$1,100 / form

Don't Become a Statistic!

I-9 Audits are becoming more common, especially under the Obama Administration, which sees them as a less-invasive compliance tool (compared with workplace raids).

Recent examples of businesses that were audited or prosecuted and came up short include:

• GPX/GPX, USA

A seismic surveying company, Texas
A 20-count indictment against the corporation and field operations supervisor for conspiracy to harbor and transport illegal aliens and failure to complete Forms I-9. If convicted, supervisor may face 100-year prison sentence, 62-years supervised release, and a \$5 million fine. GPX faces up to a \$10 million fine and five years probation per count.

• Infinite Visions, LLC

A clothing manufacturer, New Jersey
Fined \$625,000 for I-9 form and record-keeping violations following an I-9 audit conducted by U.S. Immigration and Customs Enforcement (ICE).

• Four Seasons Earthworks:

A family-run construction business
With 22 employees, none were undocumented. Levied a \$9,500 fine for incomplete I-9 forms (only used documents from List B to verify employment eligibility).

• Herbco International

An organic farm, Washington State
An I-9 audit found 86 undocumented workers; management terminated all 86, then re-hired 25 of them. Herbco was fined \$1 million and received 5 years probation; management pleaded to misdemeanor charges.

• Centerplate, Inc.

Food service/hospitality, South Carolina
Charged with discrimination against employment-authorized aliens by requiring specific documents to prove employment authorization. Settled out of court with Centerplate agreeing to pay \$250,000 in civil penalties.

Murphy Desmond Can Help

If you have questions or concerns about your company's employment verification practices, Attorney Glorily A. Lopez and our qualified immigration legal team can help. We offer training seminars for Human Resources and can work directly with your HR Department and/or management team on internal I-9 audits, I-9 training, and general immigration compliance.

Attorney Lopez is a member of the American Immigration Lawyers Association (AILA) and is a past Chair of the AILA Wisconsin Chapter. Contact Attorney Lopez at 608.270.5550 or at glopez@murphydesmond.com.



Glorily Lopez
Attorney

This information sheet provides general guidance about the titled subject, is not to be regarded as legal advice, and does not create an attorney client relationship between Murphy Desmond S.C. and the reader. Because the information herein may become outdated or may not apply to your specific circumstance, it should not be relied upon or used in place of a detailed consultation with a professional advisor. If you need legal advice, Murphy Desmond can help.