

GUIDELINES FOR I-9 VERIFICATION

Table of Contents:

Background	2
Basic Employer Responsibilities	2
Penalties	3
When an I-9 Must be Completed/Who Must be Verified	4
What Constitutes a Break In Service	4
Procedures for Completing the I-9	5
Additional Points About Documents/Document Numbers	6
When Required Documentation is Not Available	7
Enforcement/Follow Up	8
Document Retention	8
Updating and Reverification	8

Original: December 2008

Revision: September 2012

Murray State University
Human Resources
412 Sparks Hall
Murray, KY 42071
(270) 809-2146
or
msu.hr@murraystate.edu

Background

The Immigration Reform and Control Act of 1986 (IRCA) for the first time in US history imposed penalties on employers for knowingly hiring or continuing to employ individuals who are not authorized to work in the US. Illegal employment has been an increasing problem in this country, and Congress enacted IRCA in an effort to stem the flow of illegals into the US by imposing sanctions on employers. The law requires employers (in our case Murray State University) to verify the identity and employment eligibility of all employees hired after November 6, 1986 on a form called the I-9. IRCA, as modified by the Immigration Act of 1990 (IMMACT90), also prohibits employers from engaging in “Unfair Immigration Related Employment Practices.” IRCA’s anti-discrimination provisions complement those found in Title VII of the Civil Rights Act of 1964. The anti-discrimination provisions provide employees with extensive protections.

- **National Origin Discrimination** prohibits an employer from refusing to hire anyone because the person is of a certain national origin
- **Document Abuse** prohibits an employer from refusing to accept certain documents or from demanding to see certain documents as long as the documents are acceptable
- **Citizenship-Status Discrimination** prohibits an employer from refusing to hire someone based on their citizenship or immigration status in the US

Employers must therefore achieve a very fine balance between ensuring that all employees are authorized for employment in the US and not engaging in discrimination.

Basic Employer Responsibilities

The Immigration Reform and Control Act of 1986 requires employers to:

- Establish a policy of hiring only individuals who are authorized to work
- Complete a form I-9 for all new hires, including US citizens
- Ensure that employees fully and properly complete Section 1 of the I-9 at the time employment began
- Permit employees to present any document or combination of documents acceptable by law
- Fully and properly complete Section 2 of the I-9, sign and date the employer certification within three business days of the hire date, or on the hire date if employment is for less than 3 days
- Monitor work authorization expiration dates and request new proof of employment authorization prior to the expiration date for non-immigrants
- Retain I-9 for 3 years after the date of hire or one year after termination, *whichever is later*
- Make the I-9s available for inspection by the Immigration and Naturalization Service (INS) or the Department of Labor (DOL) for potential employer sanctions violations, or the Office of the Special Counsel for Immigration Related Unfair Employment Practices (OSC) for potential anti-discrimination violations

Penalties

Under IRCA, both INS and DOL may investigate an employer's records to determine if the law has been violated, upon giving three days advance notice. Enforcement of IRCA has been given high priority by both agencies, and substantial fines have been levied against employers, even for seemingly inconsequential paperwork violations.

Civil penalties for hiring or continuing to employ individuals who are not authorized to work:

- First offense \$250-\$2,000 per individual
- Second offense, \$2,000-\$5,000 per individual
- Subsequent offenses, \$3,000-\$10,000 per individual

Civil penalties for failure to properly complete, retain and/or make available for inspection form I-9:

- \$100-\$1,000 per violation
- The government considers each mistake on an I-9 to be a separate violation and your department can be fined for each incorrect line on the form

Civil penalties for employers who violate the anti-discrimination provisions:

- Same as for hiring or continuing to employ unauthorized individuals
- \$100-\$1,000 per person for making an unlawful request for more or different documents

Civil penalties for knowingly using, accepting or creating a fraudulent document:

- First offence \$250-\$2,000 per document
- Subsequent offenses, \$2,000-\$5,000 per document

Criminal penalties can be imposed on employers who engage in a pattern or practice of knowingly hiring or continuing to employ unauthorized individuals, or who engage in fraud or false statements, or otherwise misuse visas, immigration permits and identity documents.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) limits liability for certain technical violations of paperwork requirements for employers who can demonstrate a "good faith attempt" to comply with the verification requirements **provided** they remedy the violation within ten days of being informed of it. **The good faith defense for errors in entering document information only applies if a copy of the document is attached. Therefore it is especially important to attach to the I-9 a copy of all documents used for verification.** Employers who engage in a pattern and practice of violations do not benefit from this exemption.

In addition, IIRAIRA limits an employer's liability for requesting more or different documents to those instances in which the request was made with the intent to discriminate.

Although the likelihood of being fined may be mitigated under the above circumstances, it is still very important to make every effort to fully comply with IRCA.

In addition to civil and criminal penalties, other consequences may result from violations of the IRCA law, such as the loss of federal government research funds. The Executive Order 12989 of 1996 orders federal agencies to bar employers who hire unauthorized aliens from procuring government contracts for a period of one year.

The responsibility for any violation of IRCA regulations, including hiring or continuing to employ an unauthorized individual, failing to complete an I-9 or completing it improperly, rests on the department, including the payment of any fines or penalties.

When an I-9 Must Be Completed/Who Must Be Verified

An I-9 must be completed for

- New employees hired after November 6, 1986 including full-time, part-time, permanent, non-permanent, and student employees. This applies to all new hires, including US citizens
- Employees who have terminated employment and, after a break in service (any period of actual resignation or termination), are re-hired in either the same or a different position. If the employee is re-hired within three years of having completed the original I-9, it can just be updated. *(See What Constitutes a Break in Service below)*
- Employees who transfer from another Kentucky higher education institution or from state government
- Rehired annuitants

An I-9 needs NOT to be completed for:

- Individuals hired prior to November 6, 1986 who are continuing in their employment
- Independent contractors
- Persons who provide labor who are employed by a contractor providing contract services.
- An employee who returns from approved paid or unpaid leave of absence
- An employee who is promoted, demoted or gets a pay raise
- An employee who returns from a temporary layoff due to lack of work
- An employee who returns after a strike or other labor dispute
- An employee who is reinstated after wrongful discharge

In all instances, the individual must have had a reasonable expectation of being able to resume employment.

What Constitutes a Break in Service

INS specifically defines continuing employment as periods during which an employee is on an approved, paid or unpaid, leave of absence and has a reasonable expectation of employment at all times. Minor breaks, such as a weekend between successive appointments, are not breaks in service. **However, if the person resigns or is terminated and there is a break in service of even one day, a new I-9 must be completed (or the old one updated, if the re-hire is within three years of the completion of the original I-9) upon return to work.**

Employees in a nonimmigrant status whose status expires prior to the filing of an extension of stay application to the INS must be terminated, not put on a leave of absence. Also, those who do not obtain INS approval of a change of status prior to the expiration date of their prior status must be terminated. They must therefore complete a new I-9 upon returning to work, after receiving INS approval of the extension of stay or change of status.

Procedures for Completing the I-9

The I-9 verification must be completed within the specified timeframe whether or not the employee works on campus:

- On or before the start date if the period of employment is less than three days
- Within 3 business days of the start of employment if longer than 3 days
- May be completed before employment begins

The I-9 should never be completed before an offer of employment is accepted because it contains information that could lead to discrimination charges. It is permissible to complete the I-9 after the person accepts an offer but before employment begins, but the hiring unit must be consistent about when the process is completed for all employees. The best way to be consistent is to give all employees the choice of when to complete the process, either before employment begins, or within three business days of the hire date.

Section 1 should be completed *no later than the first day of employment* and Section 2 should be completed *by the third day*. Although the employee may complete Section 1 ahead of time, the actual verification must be done in person and original documents, not photocopies, or faxes, must be presented. The verification must be conducted in person, because the employer is required to verify identity and examine original documents.

When the employee will not be working on campus, or is not physically present on the start date, the I-9 process should still be completed within the required time frame. The department should designate someone to complete the I-9 process on its behalf.

Departments should make every effort to have the process completed within the required time frame. However, if that is not feasible in very unusual cases, the I-9 should never be backdated to make it appear to have been completed at the appropriate time.

If the new hire is not a US citizen or permanent resident and is not in the US on the hire date, the I-9 cannot be completed because the person would not have immigration status.

The I-9 should be completed as soon as the person enters the US, and an explanation of the delay in completing the I-9 should be attached.

Authorized Representative's responsibilities include:

- Ensure that a blank I-9, along with the instructions and the acceptable document list, is given to all new employees
- Pre-print the department information, using a complete street address, before photocopying
- Instruct the new employee to complete the employee section (Section 1) on or before the first day of work, and present the form and appropriate documents upon reporting for work.
- Examine original, not photocopied or faxed documents presented by the employee (remember the employee chooses from the list of acceptable documents)
- Complete all parts of Section 2, sign, and date the form. The signature must be an original, not a stamp or photocopy. Record the title, issuing authority, number, and expiration date (if any) of the document(s) under the appropriate list.
- Fill in the date of hire and correct information in the certification block
- Make a photocopy of the original documents and attach them to the I-9
- Review the I-9 for completeness and accuracy: complete all appropriate blanks, check the appropriate box, check for signatures, and date the form.
- Forward I-9 and photocopied documents to Human Resources records area.

An employee should not be put on payroll until the I-9 has been completely and properly executed. Proper completion of the I-9 is not to be taken lightly, as it is a sworn statement on the part of both the employee that the information given is correct and the employer that the documents have been examined and recorded in the I-9.

When accepting documentation

- List A documents establish **both** identity **and** employment eligibility. A document from this list satisfies both proof requirements (See *Additional Points About Documents/Document Numbers* below).
- List B documents establish identity only and List C documents establish employment eligibility only. If a document from List A is not used, then one from List B **and** one from List C are required (See *Additional Points About Documents/Document Numbers* below).
- Over documentation can create liability for discrimination
- The documents should appear genuine on their face and relate to the person presenting them

Additional Points About Documents/Document Numbers

An alien number is a number assigned to an individual, usually upon granting of permanent residence. Permanent residents have an A# that is 8 or 9 digits preceded by "A."

An admission number is an 11-digit number written on the **I-94 arrival/departure record** assigned to all non-immigrants that enter the US legally.

Duration of Status applies to F-1 students and J-1 Exchange visitors. There is not an expiration date on their **I-94** card. It is marked "D/S" (Duration of Status). If an employee presents an unexpired foreign passport and I-94, the employer will need to request the I-20 or IAP-66 to obtain the expiration date. D/S should be listed as I-94 expiration date under List A and the I-20 or IAP-66 expiration date should be written in the margin. However, if the F-1 students or J-1 Exchange visitors present any other combination of documents, such as a driver's license and unrestricted social security card, do not request to see any other documents.

Immigrant, permanent resident, and "green card" holder are basically referring to the same thing. These individuals may stay in the US permanently. They enjoy most of the rights and privileges of US citizens and, with a few exceptions, are eligible to work anywhere. Permanent residents may remain in the US indefinitely without having to extend their stay. The **I-551** document proves that the INS has granted a person "lawful permanent residence."

A **visa** is a stamp that is placed in a person's passport at a US consulate outside the US. The State Department issues visas.

Immigration status is granted by an INS inspector at the port of entry and is recorded on the **I-94** card that is then stapled into the passport. It is the status of an individual that governs permissible activities and duration of legal stay. A person can change from one immigration status to another. It is the immigration status and not the visa that determines employment eligibility.

Non-immigrants are individual who enter the US with a visa that permits them to remain only temporarily, such as B-2 tourists, F-1 students, J-1 exchange visitors, or H-1B temporary workers. All non-immigrants will have an **I-94** arrival/departure card issued by INS. INS keeps the "arrival" portion and gives the "departure" portion to the individual. This card serves as a record of the person's status. The "departure number" in the upper left portion of the card is the I-94, or admission number, for Section 2.

When Required Documentation is Not Available

If an employee is not able to produce all required documentation within the first 3 days of employment, write down what documentation is available and photocopy it. A receipt for an application for a document may be presented in lieu of the document for:

- A lost, stolen, or damaged document
- Temporary I-551 stamp on a form I-94
- Refugee admission stamp on a form I-94

The receipt must be from the actual issuing state or federal agency with which the application has been filed, such as the Social Security Administration. If presented with a receipt, the word

“receipt” should be entered on the “document title” line and the receipt number, if any, should be entered on the “document #” line. Photocopy the receipt and attach it to the I-9.

The employee must be placed on an unpaid leave of absence or terminated if a receipt cannot be produced within three days. In addition, **the employee must present the original replacement document within 90 days of beginning employment.** In such an event, Human Resources will follow up with the employee.

Enforcement/Follow Up

Employment at Murray State University is contingent on verification of identity and work eligibility. Human Resources will monitor through an I-9 tracking system the status of incomplete forms. HR staff will follow up with an employee (and his or her supervisor, if necessary) who have not provided the required documentation. If the required verification cannot be made, the University will place an employee on unpaid leave of absence or terminate his or her employment.

Document Retention

Completed I-9 forms should be sent to the respective office. If no follow up or correction is necessary, it will be retained as below:

- Student Financial Aid for student hourly staff (Student Workers, Student Temps, and Graduate Assistants)
- Human Resources for all regular employees (Regular PT, FT, Adjuncts and Temporaries)

I-9 forms must be retained for three years after the hire date or one year after termination, whichever is greater. The I-9 form of a current employee should never be discarded and should be kept in a separate file from other personnel documents.

Updating and Reverification

The I-9 form needs to updated (Section 3) when

- An employee is rehired after a break in service (*see What Constitutes a Break in Service on page 6*).
- The employee’s temporary work authorization approaches the expiration date
- An employee is rehired within three years after the completion of the original I-9.

The I-9 form needs to completed again, in its entirety, including new documentation, when

- An employee is rehired three years after the completion of the original I-9.

Human Resources will perform updating, re-verification, and most of the initial verification.