

Maintaining I-9s: The Top 10 Do's and Don'ts

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Don't get sloppy with requiring and maintaining Form I-9 documentation for verification of an employee's identity and legal authorization to work in the United States.

Audits and enforcement of I-9 compliance is led by U.S. Immigration and Customs Enforcement ("ICE"). Recently, the agency is increasingly pursuing enforcement against employers under the criminal code, rather than simply imposing civil penalties. The agency says the new focus on employers, rather than employees, is "to target the root cause of illegal immigration."

Penalties: Poor documentation can cost you \$1,000.00 per worker, and knowingly hiring an illegal immigrant can result in a \$10,000-per-worker fine.

To sidestep potential legal trouble and discrimination complaints, follow these 10 I-9's do's and don'ts:

1. **Do** require all new hires to complete and sign Section 1 on their first day of work.
2. **Don't** ask an applicant to complete an I-9 prior to making a job offer. Unhired applicants can use I-9 information to allege that you discriminated against them.
3. **Do** review employee documents to ensure they are consistent with newest version of the I-9's list of acceptable documents and they appear genuine. (See *the new I-9* at www.uscis.gov/I-9.)
4. **Don't** ask new hires for any particular documents or for more documents than the I-9 requires. The employee chooses the documents, not the employer.
5. **Do** establish a consistent procedure for completing I-9s, and educate your hiring managers on that procedure.
6. **Don't** consider the expiration date of I-9 documentation when making hiring or firing decisions.
7. **Do** make and retain copies of all I-9 documentation provided. (Only a few states make this mandatory, but it's a good idea.)
8. **Don't** forget to keep a tickler file to follow up on expiring documents that limit an employee's authorization to work. You don't have to re-verify identity documents, such as a driver's license.
9. **Do** keep I-9s and copies of documents for three years after the employee's hire date or one year after his or her termination, whichever comes later.
10. **Don't** put the I-9 in an employee's personnel file. To protect against discrimination claims, keep it and supporting documentation in a separate file.

Do ensure you are prepared for an I-9 audit by completing a self-audit!!

Takeaway: If you need assistance with any of the requirements or performing a self-audit, please contact our immigration attorney Alan Pollack, Esq.

Attorney

- Alan J. Pollack

Practice

- Employment Law