

Policy on the Immigration Reform and Control Act of 1986

GENERAL

The Immigration Reform and Control Act of 1986 (Public Law 99603) represents the first major revision of America's immigration laws in decades. Section 101 of the Act is designed to control the unlawful employment of aliens in the United States by imposing civil and criminal penalties on those persons and entities that hire, or that recruit or refer for a fee, unauthorized aliens. Employers should hire only American citizens and aliens who are authorized to work in the United States.

Employers who hire persons to perform labor or services in return for wages or other net pay must verify that the persons are in the country legally. The Immigration and Naturalization Service (INS) Form 1-9 must be completed by both employer and employee for anyone hired after November 6, 1986 (unless the person left the credit union's employ before June 1, 1987).

BASIC REQUIREMENTS

The law requires employers to do five things:

1. Have all employees hired after November 6, 1986 fill out their part of the Form 1-9 when they start to work.
2. Check documents establishing employee's identity and eligibility to work.
3. Properly complete the Form 1-9.
4. Retain the form for at least three years or for one year after employment terminates, whichever is longer.
5. Present the form for inspection to an INS or Department of Labor officer upon request. The employer will normally be given three days' advance notice.

ACCEPTABLE DOCUMENTATION

The Act designates certain documents which may be used to determine employment eligibility. The employee will need to furnish a document or documents that establish identity and employment eligibility. If the employee does not have one document that establishes both identity and employment eligibility, he or she must produce two documents -- one to establish identity and one to establish employment eligibility.

NOTE: While United States citizens are automatically eligible for employment, they too must provide the required documents and complete the Form 1-9.

Documents That Establish Identity and Employment Eligibility:

1. United States Passport.
2. Certificates of United States Citizenship (INS Form N-560 or N-561).
3. Certificate of Naturalization (INS Form N-550 or N-570).
4. Unexpired foreign passport which either:
 - (a) Contains an unexpired stamp which reads: "Processed for I-551. Temporary Evidence of Lawful Admission for permanent residence. Valid until _____. Employment authorized or (b) has attached to it a Form 1-94 bearing the same name as the passport and containing an employment authorization stamp, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form 1-94.
5. Alien Registration Receipt Card (INS Form 1-151) or Resident Alien Card (INS Form 1-551), provided that the card contains a photograph of the bearer.
6. Temporary Resident Card (INS Form 1-688).
7. Employment Authorization Card (INS Form I-688A).

Documents That Establish Identity:

1. For individuals 16 years of age or older:
 - (a) A driver's license or identification card containing a photograph, issued by the state or an outlying possession of the United States. If the driver's license or identification card does not contain a photograph, identifying information should be included such as name, date of birth, sex, height, color of eyes, and address.

NOTE: The definition of "state" includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States. The term "outlying possessions of the United States" includes American Samoa and Swains Island.
 - (b) School identification card with a photograph.
 - (c) Voter's registration card.
 - (d) United States Military card or draft record.
 - (e) Identification card issued by federal, state, or local government agencies.
 - (f) Military dependent's identification card.
 - (g) Native American tribal documents.
 - (h) United States Coast Guard Merchant Mariner Card.
 - (i) Driver's license issued by a Canadian government authority.
2. For individuals under age 18 who are unable to produce one of the documents listed above:
 - (a) School record or report card.
 - (b) Clinic doctor or hospital record.

- (c) Daycare or nursery school record.

Minors under the age of 18 who are unable to produce one of the identity documents listed above may have, as an alternative, a parent or legal guardian attest to their identity.

3. If an individual with a handicap who is being placed into employment by a nonprofit organization or association or as a part of a rehabilitation program is unable to produce a document which proves identity, the rule authorizes a parent or legal guardian of the individual or a representative from the nonprofit organization, association, or rehabilitation program placing the individual into a position of employment to attest to his or her identity.

Documents That Establish Employment Eligibility:

1. Social Security Number card other than one which has printed on its "not valid for employment purposes." This must be an original card issued by the Social Security Administration, not a metal or plastic reproduction,
2. An original or certified copy of a birth certificate issued by a state county, or municipal authority bearing an official seal.
3. Unexpired INS employment authorization.
4. Unexpired reentry permit (INS Form 1-327).
5. Unexpired Refugee Travel Document (INS Form 1-571)
6. Certification of Birth issued by the Department of States (Form FS-545)
7. Certification of Birth Abroad issued by the Department of State (Form DS-1350).
8. United States Citizen Identification Card (INS Form 1-197).
9. Native American tribal document.
10. Identification Card for use of Resident Citizen in the United States (INS Form 1-179).

The employer may not specify which documents it will accept for verification. As long as the employee presents a document or a combination of the documents listed above that appear to be genuine, the employer must accept them. In the case of a minor who does not have any or all of the required documents, a parent or guardian may complete the appropriate sections of the Form 1-9 for the minor.

A special rule applied to illegal aliens hired between November 7, 1986 and September 1, 1987 who had applied or intended to apply for legalization. Until September 1, 1987, the employer could write "Special Rule" under Documentation Identification Number in List C of the Form 1-9 and "September 7, 1989" under Expiration Date. Illegal aliens hired during this time period must have provided work authorization documents by September 1, and the Form 1-9 must have been updated to reflect the authorization.

If an employee's work authorization expires and the employee does not produce a document that either shows an extension of employment eligibility or that is a new grant of work authorization, the employee must be terminated. Continuing to employ that person is a violation of the law, even if the employee previously was authorized to work.

GRANDFATHER CLAUSE

The new immigration law applies only to those employees hired after November 6, 1986. If, however, an employee is rehired who had quit or had been terminated, the employment verification process should be completed as it would be for others hired after November 6, 1986. It is not necessary for an employee to complete or recomplete a new Form 1-9 when he or she has a temporary absence for approved leave, strike, layoff, or transfer.

TIMETABLE FOR COMPLETING FORM I-9

1. Persons Hired Before November May 31, 1987. The Form 1-9 for these employees must have been completed before September 1, 1987.
2. Persons Hired After May 31, 1987. The Form 1-9 for these employees must be completed within three business days of the date of hire. If the person is employed for less than three days, the Form 1-9 must be completed before the end of the employee's first working day.
3. The following persons do not need to complete the Form 1-9:
 - (a) Persons hired before November 7, 1986.
 - (b) Persons hired after November 6, 1986, whose employment terminated before June 1, 1987.
 - (c) Persons who provide labor to the credit union who are employed by a contractor providing contract services.
 - (d) Persons who are independent contractors.

UNLAWFUL DISCRIMINATION

The new immigration law prohibits discrimination. If any employer has four or more employees, it may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of the individual's nation-91 origin or, in the case of a citizen or intending citizen, because of his or her citizenship status.

Employer must obtain the required information from and complete the Form 1-9 for all new hires, not just those with a foreign-sounding name or those whose physical characteristics or manners of speaking make them appear to have come from another country.

Employers found to have engaged in discriminatory practices under the new immigration law will be ordered to stop the practice. They may be ordered to hire, with or without back pay, individuals directly injured by the discrimination and may be subject to monetary penalties, including attorneys' fees if a lawsuit is filed.

RECORD RETENTION

Employers must retain Form 1-9 for at least three years. If an individual is employed for more than three years, the Form must be retained for one year after the individual's employment is terminated.

PENALTIES

Employers who violate the law with respect to employees hired after November 6, 1986 may be subject to penalties. These penalties may extend even to first-time violators.

Civil Penalties:

1. Employers who knowingly hire unauthorized employees or who continue to employ persons knowing that they are or have become unauthorized may be fined as follows:
 - (a) First Violation: Not less than \$250 and not more than \$2,000 for each unauthorized employee.
 - (b) Second Violation: Not less than \$2,000 and not more than \$5,000 for each unauthorized employee.
 - (c) Subsequent Violations: Not less than \$3,000 and not more than \$10,000 for each unauthorized employee.
2. Employers who fail to properly complete retain, and present for inspection the Form 1-9 may face fines up to \$1,000 for each covered employee.
3. Employers found to have required a bond or indemnity from an individual against liability under the new law may be fined \$1,000 and ordered to make restitution.

Criminal Penalties:

1. Employers convicted for having engaged in a pattern or practice of knowingly hiring unauthorized aliens after November 6, 1986 may face fines of up to \$3,000 per employee and/or six months in prison.
2. Persons who use fraudulent identification or employment eligibility documents or documents that were lawfully issued to another, or who make a false statement or attestation, for purposes of satisfying the employment eligibility requirements may be imprisoned for up to five years and/or fined.