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Office of General Counsel

I-9 and Work Authorization

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Section 1: I-9's Generally

Form I-9 Generally

- Since 1986, employees in the U.S. have filled out I-9 forms upon hire
- Form I-9 certifies that the employee is eligible to work in the United States
- The employee completes section 1 upon hire. The employer then has three business days to complete section 2 (this is a correction from the original webinar, which indicated calendar days).
- Section 3 is for re-hiring and re-verification
- Independent contractors do not have fill out I-9's

Form I-9 Generally

- There are three lists of documents that are used to verify eligibility and identity. List A documents verify eligibility and identity. List B and List C documents combine to verify eligibility and identity

List A Documents – Identity and Eligibility

- Valid U.S. Passport
- Permanent Resident Card, Form I-551 (“Green Card”)
- Foreign Passport with I-551 MRIV Stamp
- Foreign passport with Form I-94 or Form I-94A with Arrival-Departure Record, and containing an endorsement to work (e.g. International Students)
- Employment Authorization Document, Form I-766
- Passport from Micronesia or the Marshall Islands

List B Documents – Identity Only

- Valid State Driver's License
- Valid State Issued ID Card
- School ID card with a photograph
- Voter registration card
- U.S. military card or draft record
- Military dependent's ID card
- U.S. Coast Guard Merchant Mariner Document (MMD) card
- Native American tribal document
- Driver's license issued by a Canadian government authority
- Acceptable List B Documents for individuals under the age of 18 who are unable to present a document listed above:
 - School record or report card
 - Clinic, doctor or hospital record
 - Day care or nursery school record

List C Documents – Eligibility Only

- Valid Social Security Card
- State Department Birth Certificate
 - Form FS-240, Form FS-545, Form FS-1350
- Domestic Birth Certificate
- U.S. Citizen ID Card, Form I-197
- U.S. Resident ID Card, Form I-179
- Native American Tribal Document
- Employment Authorization Document Issued by the Department of Homeland Security

Re-Verification: Who Needs Re-Verification?

- You do not have to re-verify U.S. Citizens and non-citizen nationals (American Samoans) even if their original verification documents expire
- You do have re-verify non-citizens if they verify with documents that expire by the date of expiration of the original documents or the EAD (automatic extension document)

Re-Verification: Re-Hiring

- If you re-hire an employee within three years of the date of their last I-9, you can rely on their previous I-9, if the documents used to validate are still valid
- You still need to fill out a new Section 3 of the I-9 to indicate the new date of hire

Reverification – Continuous Employment

- Reasonable expectation of continuing employment
- This includes seasonal employees or 9-month employees
- This does not typically include adjunct faculty as per the current IFO and MSCF contracts



Section 2: International Students

J-1 Students

- J-1 Students are only eligible as listed on their Form DS-2019
- Authorization for J-1 Students:
 - Unexpired foreign passport AND
 - From I-94/I-94A indicating J-1 Status
 - Form DS-2019 with responsible officer's signature

F-1 and M-1 Students

- F-1 and M-1 Students are eligible to work in the following capacities for 20 hours during school, 40 between sessions:
 - On-Campus
 - Off-Campus with an affiliated entity
 - Curricular Practical Training (CPT)
 - Off-Campus in cases of severe economic hardship
 - Employment sponsored by international organization
 - Optional Practical Training (OPT)

F-1 and M-1 Students

- Authorization Documents:
 - Unexpired foreign passport AND
 - Form I-20 with DSO Endorsement for Employment
 - Form I-94/I-94A indicating F-1 Status
 - Note: J-1, F-1, and M-1 student can substitute a List B and List C document combination for their foreign passport as long as they still include their I-94/I-94A and I-20/DS-2019 documents

Section 3: I-9 Auditing and Recordkeeping

I-9 Document Retention

- I-9 Documentation should be kept for the entire time an employee is employed (including re-hire and re-verification documentation)
- If the employee is separated, we must keep the I-9 documentation for the longer period of:
 - 3 years from the date of hire
 - 1 year after separation
- We can keep I-9 records electronically, but in order to do so we need to do so securely
- You may keep copies of supporting documents, but if you do so, you must do so for all employees

I-9 Inspection

- The Federal Departments of Homeland Security, Labor, and Justice can inspect I-9 records
- The Immigration and Nationalization Act gives these Federal Agencies the right to inspect any I-9 upon 3 days notice
- While an I-9 is private data under the MGDPA, the requirements of Federal Law supersede the requirements of Minnesota Law
- You should only disclose I-9's to these agencies unless there is a subpoena, warrant, or employee authorization

I-9 Self-Audit

- Employers who lose track of the I-9 process may have to do a self-audit their I-9 files
- An I-9 audit can be lengthy and expensive
- To avoid the need for a self-audit:
 - Maintain easily searchable records
 - Make notes of when I-9's need to be re-verified
 - Keep up with the I-9 process as hires are made



Section 4: Examples

Example: List A

- Dr. Worthington is a dual citizen of the United States and United Kingdom
- He presents his UK passport as identification
- Is it okay to accept because he's a dual citizen?

- ANSWER: No. A foreign passport is not valid unless it is from Micronesia or the Marshall Islands or it is accompanied by the requisite international student documentation.

Example List B

- John presents a driver's license as identification
 - The driver's license expires tomorrow
 - Can we accept?
-
- ANSWER: Yes. As long as the document is valid when the I-9 is filled out, it is acceptable.

Example: List C

- Melanie was born in Germany to American parents.
 - She presents a birth certificate as a list C document
 - Is this okay?
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- ANSWER: Yes. American citizens born outside the United States are issued Birth Certificates by the State Department evidencing their citizenship.

Example: Re-Verification

- Dr. Smith has been teaching the same class every spring as an adjunct for 25 years
- Is his employment continuous, seasonal, or neither?
- Neither. As of the date of this webinar, the IFO and MSCF contracts state that adjuncts are not guaranteed employment beyond the semester that they are currently employed. By definition, therefore, they are not continuously employed or seasonally employed. To ensure compliance, a new Section 3 should be completed every semester, and a new I-9 every three years.

Example: J-1 Student

- A J-1 exchange student wants to work on-campus at the bookstore
- This is NOT listed on the J-1 student's DS-2019
- Are they eligible?

- ANSWER: No. A J-1 student is only authorized to be employed as indicated on their DS-2019.

Example: F-1 Student

- An F-1 student wants to work on campus 40 hours a week during the semester.
- Can they do this?
- ANSWER: No. F-1 and M-1 students can only work “20 hours per week” while they are enrolled in-session. The regulations do not state we can average this out, so you should treat it as a hard cap.

Example: Data Request

- The Department of Labor sends a formal notice to inspect your I-9's
- How do you respond?
- ANSWER: You should schedule a time for the inspection. However, if the request came from an agency other than the Departments of Labor, Justice, or Homeland Security, that agency would need a subpoena, warrant, or the employee's authorization.

Example I-9 Audit

- We have to do an I-9 audit
- Is it a good idea to make all of our employees re-verify?
- ANSWER: No. It is the employer's responsibility to ensure I-9 compliance. Therefore, it is your responsibility to find out who needs to re-verify and who does not before asking anyone to re-verify.

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