Immigration Reform and Control Act of 1986 - New Employer Responsibilities

On November 6, 1986, President Reagan signed the Immigration Reform and Control Act of 1986 ("IRCA"). A great deal of publicity was generated by the negotiation and passage of this law, particularly the granting of amnesty to aliens unlawfully residing in this country since January 1, 1982.

This law contains two major new provisions affecting all employers, including the State University of New York, which will require significant changes in personnel procedures at SUNY campuses:

- The law imposes civil and criminal penalties on employers who knowingly hire aliens who are not authorized to work in the United States.

- The law requires all employers to sign and retain verification forms for every employee hired after November 6, 1986, alien and non-alien alike.

Employer Sanctions. Since November 7, 1986, it has been unlawful for any employer to hire an alien, knowing that the alien is not authorized to work in the United States. On May 31, 1987, the designated "education period" ends, during which time proceedings against violators were not to be initiated nor penalties imposed. Commencing June 1, 1987, and for the next 12 months, employers will be given warnings only for first violations of the law. After June 1, 1988, civil penalties ranging from $250 to $10,000 per violation will be assessed against violators based upon the number of times the employer has been found to be in violation of IRCA and the seriousness of the violation. Criminal penalties are also established for employers who engage in a "pattern or practice" of hiring unauthorized aliens.
Employers and their personnel representatives will now have to familiarize themselves with the available types of work authorization. Among the categories of persons authorized to work are U.S. citizens, permanent resident aliens, and aliens so authorized by the Immigration and Naturalization Service ("INS"). The last category, in particular, will require familiarization with the types of non-immigrant visa statuses which may carry employment authorization and the scope of such authorizations. Planning is now underway within the University for workshops and written advisories which will assist University officials in understanding visa categories and, thus, in complying with the law.

A so-called grandfather clause of IRCA provides that any act of employment occurring before November 6, 1986, is not subject to the prohibitions of IRCA, even if the employer learns after that date that the employee has no work authorization.

**Employer Verification.** IRCA also requires that all employers establish procedures for requesting from all employees, examining, and attesting that they have examined, documents evidencing the employee's employment authorization and identity. The employer's attestation must be on a form known as the I-9, which is to be issued by INS. The employee must also sign the I-9 stating that the employee is a citizen or national of the U.S., a permanent resident alien, or otherwise authorized to work. IRCA specifically lists the documents which must be produced in original form to demonstrate employment authorization and identity. Verification forms must be retained by the employer for three years after hire or one year after terminating employment, whichever is later.

While official verification forms will not be available from the INS until after June 1, 1987, and no legal action will be taken for violations of IRCA occurring before that date, employers are advised to obtain required documentation from all employees hired after November 6, 1986. IRCA does provide that sanctions will be imposed for continuing to employ an unauthorized alien hired after November 6, 1986; consequently campuses should have evidence of work authorization available for employees placed on the payroll after the law's effective date.

Although an employer will be presumed to be in compliance with the paperwork and verification requirements of IRCA for 3 business days after the employee is hired, as a matter of sound procedure the necessary documents probably should be produced by the employee and examined before the employee goes on the payroll. This will avoid having to remove an individual from the payroll after 3 days if the appropriate documents are not forthcoming. In order to insure that verification forms are completed for all employees hired at a campus, including
students employed by the institution, we recommend that Presidents designate one or more appropriate campus officials to sign I-9 forms on behalf of the institution.

Violation of the verification requirements may also result in the imposition of civil or criminal penalties.

As mentioned above, because of the complexities of this new and important law, a memorandum is also being sent to the Personnel Officers at the State-operated campuses detailing the more technical requirements of IRCA. Since the law applies with equal force to the community colleges, we recommend that the community colleges consult further with representatives of their sponsors and appropriate local counsel on specific procedures for compliance.

Sanford H. Levine
University Counsel and
Vice Chancellor for Legal Affairs

Joseph C. Burke
Provost

Information copies to:

Dean, Statutory Colleges
President Coll
Vice Provost Spencer
To: Personnel Directors
   State-operated Campuses

From: Offices of the University Counsel and
      Vice Chancellor for Legal Affairs and
      Associate Vice Chancellor for Employee
      Relations and Personnel Operations

Subject: Immigration Reform and
         Control Act of 1986 II

This memorandum supplements Memorandum to Presidents, Vol. 87, No. 2, dated April 20, 1987, and a companion memorandum to Personnel Directors, dated April 21, 1987, concerning the requirements of the Immigration Reform and Control Act of 1987 ("IRCA"). As mentioned in the two previous advisories, further information was to be provided to campuses upon promulgation of final regulations and issuance of the form I-9 by the Immigration and Naturalization Service ("INS").

On May 1, 1987 the INS issued final regulations governing IRCA's employer verification requirements. However, the final I-9 form was not issued at that time. On June 5, 1987, the INS published a Notice to Employers which included the final Form I-9 and a Handbook for Employers containing instructions on completion of the I-9. These documents are attached. INS has stated further that it will not issue any written citations or take any other enforcement action against employers during the month of June 1987 as a further step in its phase-in approach to enforcement of IRCA.

The basic requirements of IRCA were described in the memoranda referenced above. The final regulations, however, did contain several significant changes from the proposed rules. These changes are as follows:

- **Retroactivity** - The date for completion of I-9s for employees hired between November 7, 1986 and May 31, 1987 was extended to September 1, 1987. If an employee hired after November 6 was not still on the payroll as of May 31, 1987, no I-9 would have to be filled out at all.

- **Time for Production of Documents** - The final regulations retain the three-day grace period for production of documents upon hire. However, they contain an additional time period of
21 days where the employee presents to the employer a receipt for application for a needed document which has been lost or is otherwise unavailable for production by the employee. The employee must then actually come back with the document by the end of the 21 day period after hire.

- Related Employer - The final regulations state that an I-9 need not be completed if the employee is continuing his or her employment with a related employer. The new employer must only obtain a copy of the I-9 prepared previously. In the case of an employee who was entitled to pre-enactment status (hired before November 6, 1986) and for whom there is no I-9, the employment by a related employer after November 6, 1986 should still be exempt from the I-9 procedure. We are proceeding on the basis that The Research Foundation of State University of New York and the individual State-operated campuses are related employers. Thus, if an employee transfers from the SUNY payroll to the Research Foundation payroll, or visa versa, or transfers between State-operated campuses, no new I-9 would have to be completed, as long as review of the previous I-9 demonstrates that the employee is authorized to work.

- Independent Contractors - The final regulations contain a definition of "independent contractors" which generally requires a case-by-case review of the facts. No I-9 need be completed upon the contracting for service of such individuals. Within SUNY, it would be appropriate to utilize this exemption for people providing certain services who are paid by voucher with the exception of any people providing credit-bearing instructional services.

- Delegation of Verification Responsibilities - The final regulations permit the employer portion of the I-9 to be completed and signed on behalf of the employer by "an employer, his or her agent, or anyone acting directly or indirectly in the interest thereof." This provision may assist in situations where, for example, a temporary employee is hired at a location away from the campus who ordinarily would not have personal contact with the campus personnel office or other centralized administrative unit. However, it must be remembered that liability for compliance with IRCA remains with the employer.

Thomas M. Mannix
Sanford H. Levine

cc: Executive Council
Part III

Department of Justice

Immigration and Naturalization Service

Immigration Reform and Control Act; Notice to Employers
DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

[INS Number: 1030-87]

Immigration Reform and Control Act; Notice to Employers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide the public with the materials that the Immigration and Naturalization Service (INS) has developed for employers to comply with the employer sanctions provisions of the Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603). Enforcement of the employer sanctions provisions of the Immigration Reform and Control Act (IRCA) is statutorily mandated to begin on June 1, 1987. Contained in this notice are the "Employment Eligibility Verification Form I-9k," which is to be used by employers to verify the employment eligibility of employees hired after November 6, 1986, and the M-274 "Handbook for Employers" which provides employers with step-by-step instructions on how to complete the Form I-9 and other information regarding compliance with the new immigration law.


SUPPLEMENTARY INFORMATION: INS has worked with many labor and employment organizations, the Congress and others to design and produce the Form I-9 and the M-274 Handbook for Employers. The Form I-9 received final approval from the Office of Management and Budget under control number 1115-0136. The Form I-9 and the Handbook will be widely distributed in the coming weeks and thereafter. Both are available at INS and Government Printing offices across the country. During the month of June and in early July, the Handbook (which contains copies of the Form I-9 and instructions for completion of the Form I-9) will be mailed to 6,680,894 employers who have withheld taxes for their employees. Copies of the Form I-9 and the Handbook have been made available to many trade, labor, and business associations and organizations who will also be distributing these materials to the public. The Form I-9 may be purchased in bulk from the Superintendent of Documents, U.S. Government Printing Office (CPO), Washington, DC 20402, Tel. (202) 783-3238 or any CPO bookstore. Both the Form I-9 and the Handbook for Employers may be reproduced or reprinted.

INS has developed a phase-in enforcement policy that it believes conforms with the congressional intent of the legislation and will encourage employers to voluntarily comply with the new employer sanctions law. In light of this phase-in approach, INS will not issue any written citations or take any other enforcement action, beyond informational and educational activities, during the month of June. Exceptions to this policy will only be made in the case of blatant violators. During the one-year citation period established under IRCA (June 1, 1987-May 31, 1988), citations will only be issued after "informational contacts" have been made and it is established that employers have received information concerning their new responsibilities and are found out of compliance. This additional step, prior to the issuance of citations, will provide every employer in the country a reasonable opportunity to comply with IRCA. Exceptions to this phase-in enforcement policy will be made only in cases where employers exhibit a wanton disregard for the law.

Final rules implementing IRCA are located in the Code of Federal Regulations in Title 8, Part 274a and were published in the Federal Register on May 1, 1987. 52 FR 15216. The Form I-9 contained in this notice is the finalized version and should be used for verifications performed after the date of this publication. As stated in the "Supplementary Information" of the aforementioned final regulations on employer sanctions, INS will accept verifications previously performed on the version of the Form I-9 published in Brochure for Employers (52 FR 11567, April 8, 1987).

Mark W. Everson,
Executive Associate Commissioner,
Immigration and Naturalization Service.

BILLING CODE 4410-10-M
To American Employers:

When the Congress passed and the President signed into law the Immigration Reform and Control Act of 1986, the result was the first major revision of America's immigration laws in decades. The new law seeks to preserve jobs for those who are legally entitled to them: American citizens and aliens who are authorized to work in our country.

The Immigration and Naturalization Service is responsible for implementing this new law. Public cooperation is crucial to the success of this national effort.

Put briefly, the law says that you should hire only American citizens and aliens who are authorized to work in the United States. You will need to verify employment eligibility of anyone hired after November 6, 1986, and complete and retain a one-page form (I-9) contained in this handbook.

We have worked to make the process as simple as possible. This handbook provides a step-by-step explanation of what you must do. We hope you will find it helpful.

All Americans stand to benefit from the successful implementation of the Immigration Reform and Control Act. We seek your cooperation.

Alan C. Nelson
Commissioner
U.S. Immigration and Naturalization Service
Contents

This Handbook is divided into nine parts:

- **Part One**—why employers must verify employment eligibility. See page 1.
- **Part Two**—when you must complete Form I-9. See page 2.
- **Part Four**—unlawful discrimination practices. See page 5.
- **Part Five**—information on prohibited practices and penalties. See page 5.
- **Part Six**—timetable for implementing the new immigration law. See page 6.
- **Part Seven**—information for recruiters and referrers for a fee. See page 7.
- **Part Eight**—questions and answers about the Form I-9. See page 7.
- **Part Nine**—documents that may be used to establish employment eligibility. See page 10.

This Handbook includes two copies of the Form I-9. At the back, you will also find a list of INS offices for you to contact if you need more information.

Part One

Why Employers Must Verify Employment Eligibility of New Employees

The Immigration Reform and Control Act of 1986 is the most comprehensive reform of our immigration laws since 1952. In recent years, our nation has been increasingly affected by illegal immigration. This law, passed by Congress through a bipartisan effort, preserves our tradition of legal immigration while closing the back door to illegal entry. By combining prohibitions against employing illegal entrants (or those aliens, such as tourists, who legally enter the United States but are not authorized to work while they are here) with increased border enforcement, the law represents a step forward in the effort to secure our nation’s borders.

Employment is often the magnet that attracts persons to come to or stay in the United States illegally. The purpose of the new law is to remove the magnet by requiring employers to hire only citizens and aliens who are authorized to work here.

This new law was strongly supported by the American public. Employers will want to join the effort to protect our heritage of legal immigration and to preserve jobs for those who are legally entitled to them. This cooperation will make jobs available to American citizens and to aliens who are authorized to work in our country. It also can be a means to help people get off welfare and into jobs. Further, it is a good business practice for you to verify the identity of your workers. The law deserves your support.

The Form I-9 has been developed for verifying that persons are eligible to work in the United States. The following instructions will help you assess your responsibilities for completing the Form and understanding the law.

The law requires you as an employer to do five things:

1. Have your employees fill out their part of the Form I-9 when they start to work;
2. Check documents establishing employees’ identity and eligibility to work;
3. Properly complete the Form I-9;
4. Retain the Form for at least three years (if you employ the person for more than three years, you must retain the Form until one year after the person leaves your employment); and
5. Present the Form for inspection to an INS or Department of Labor (DOL) officer upon request. You will be given at least three days advance notice.
Part Two

When You Must Complete Form I-9

IF YOU EMPLOY PERSONS TO PERFORM LABOR OR SERVICES IN RETURN FOR WAGES OR OTHER PAY, YOU MUST COMPLETE FORM I-9 FOR:

Persons hired after May 31, 1987. For these employees, you must complete a Form I-9 within three business days of the date of the hire. (If you employ the person for less than three days, you must complete the Form I-9 before the end of the employer’s first working day.)


NOTE: If you employ people for domestic work in your private home on a regular (such as weekly) basis, these requirements also apply to you.

YOU DO NOT NEED TO COMPLETE FORM I-9 FOR:

Persons hired before November 7, 1986.

—Persons hired after November 6, 1986, who left your employment before June 1, 1987.

—Persons you employ for domestic work in a private home on an intermittent or sporadic basis.

—Persons who provide labor to you who are employed by a contractor providing contract services (e.g., employee leasing).

—Persons who are independent contractors.

Persons who are self-employed do not need to complete Form I-9.

Part Three

How to Complete Form I-9

Form I-9 contains two sections. The employee completes the first section (Steps 1, 2, and 3). If a preparer or translator assists the individual, he or she completes Step 4. The second section (Steps 5 and 6) should be completed by the employer.

When completing the Form I-9, the employee will need to provide a document or documents that establish identity and employment eligibility. Some documents establish both identity and employment eligibility. These documents appear in List A on the bottom half of the Form. Other documents establish identity alone (List B) or employment eligibility alone (List C). If the person does not provide a document from List A, he or she must produce one from List B and one from List C. A complete list of acceptable documents appears in Part Nine.

The employer should review the document or documents provided by the person. Documents should appear to be genuine and to relate to the individual.

If employees cannot complete Section 1 by themselves or need the Form translated, someone may assist them. The preparer or translator should read the Form to the employee, help with Step 1 and Step 2 as needed, have the employee sign or mark the Form, and follow Step 4.

Until September 1, 1987, if an employee indicates that he or she intends to or has applied for legalization, Special Agricultural Worker (SAW), or Cuban/Haitian entrant status, the employee is covered by a “special rule” and the employer should follow the instructions on page 4.

If a minor (under age 16) cannot produce a List A document or one of the identity documents listed in Part Nine (List B), he or she is exempt from producing one if: (1) a parent or legal guardian completes Section 1 and writes in the space for the minor’s signature the words, “minor under age 16,” (2) the parent or legal guardian completes the “Preparer/Translator Certification,” and (3) the employer writes in Section 2 the words, “minor under age 16” under List B in the space after the words “Document Identification #:” If this procedure is followed, the minor must still produce a List C document showing employment eligibility.
SECTION 1: TO BE COMPLETED BY THE EMPLOYEE

EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

STEP 1
Fill in the personal information.

STEP 2
Check the box for work eligibility. Give other information where needed.

STEP 3
Read, sign, and date.

STEP 4
(preparer/translating only)
Read, fill in information, and sign.

SECTION 2: TO BE COMPLETED BY THE EMPLOYER

EMPLOYER REVIEW AND VERIFICATION (To be completed and signed by employer)

Examine the documents and check the box that corresponds to the document. Fill in document number and expiration date.

STEP 5
Read, fill in information, and sign.

STEP 6
Read, fill in information, and sign.
HOW TO FILL OUT FORM I-9 IF THE SPECIAL RULE APPLIES

The new immigration law also provides that certain qualified aliens who have resided illegally in the United States can legalize their status. In order to legalize their status, aliens must apply under the legalization, Special Agricultural Worker (SAW), or Cuban/Haitian entrant programs.

Employers may hire applicants or prospective applicants for legalization, SAW, or Cuban/Haitian entrant status. Until September 1, 1987, these applicants are covered by a "special rule" that authorizes them to work without providing employment eligibility documents. "Special rule" employers will need to fill out the I-9 as shown below and provide one of the specified documents that establish identity (see List B in Part Nine). The employer should review the identity document. It should appear to be genuine and to relate to the individual.

After September 1, 1987, the "special rule" expires, and these applicants will need to show a work authorization document to be hired or to continue to work. Employers must update the Form I-9 by recording the work authorization document information on the Form.

**Employment Eligibility Verification (Form I-9)**

1. **Fill in the personal information.**
   - **STEP 1:** Fill in the personal information.
   - **STEP 2:** Check box #3. Write "special rule" in the space for alien number and "September 1, 1987" for the expiration date.
   - **STEP 3:** Read, sign, and date.
   - **STEP 4:** Prepare/Translator only. Read, fill in information, and sign.

2. **Under List B, check the box that corresponds to the identity document and fill in document number and expiration date.**
   - **Under List C, write "special rule" in the space for document number, and "September 1, 1987" for the expiration date.

3. **Read, fill in information, and sign.**
EMPLOYMENT ELIGIBILITY VERIFICATION (Form I-9)

<p>| EMPLOYEE INFORMATION AND VERIFICATION: (To be completed and signed by employee.) |</p>
<table>
<thead>
<tr>
<th>Name: (Print or Type)</th>
<th>Last</th>
<th>First</th>
<th>Middle</th>
<th>Birth Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address: Street Name and Number</td>
<td>City</td>
<td>State</td>
<td>ZIP Code</td>
<td></td>
</tr>
<tr>
<td>Date of Birth (Month/Day/Year)</td>
<td>Social Security Number</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I attest, under penalty of perjury, that I am (check a box):

- ☐ 1. A citizen or national of the United States.
- ☐ 2. An alien lawfully admitted for permanent residence (Alien Number A ___________).
- ☐ 3. An alien authorized by the Immigration and Naturalization Service to work in the United States (Alien Number A ___________, expiration of employment authorization, if any ___________).

I attest, under penalty of perjury, that the documents that I have presented as evidence of identity and employment eligibility are genuine and relate to me. I am aware that federal law provides for imprisonment and/or fine for any false statements or use of false documents in connection with this certificate.

Signature | Date (Month/Day/Year)

PREPARE/TRANSLATOR CERTIFICATION (To be completed if prepared by person other than the employer). I attest, under penalty of perjury, that the above was prepared by me at the request of the named individual and is based on all information of which I have any knowledge.

Signature | Name (Print or Type)
Address: Street Name and Number | City | State | Zip Code

EMPLOYER REVIEW AND VERIFICATION: (To be completed and signed by employer.)

Instructions:
Examine one document from List A and check the appropriate box. OR examine one document from List B and one from List C and check the appropriate boxes. Provide the Document Identification Number and Expiration Date for the document checked.

<table>
<thead>
<tr>
<th>List A</th>
<th>Documents that Establish Identity and Employment Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 1. United States Passport</td>
<td></td>
</tr>
<tr>
<td>☐ 2. Certificate of United States Citizenship</td>
<td></td>
</tr>
<tr>
<td>☐ 3. Certificate of Naturalization</td>
<td></td>
</tr>
<tr>
<td>☐ 4. Unexpired foreign passport with attached Employment Authorization</td>
<td></td>
</tr>
<tr>
<td>☐ 5. Alien Registration Card with photograph</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List B</th>
<th>Documents that Establish Identity and Employment Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 1. A State-issued driver's license or a State-issued I.D. card with a photograph, or information, including name, sex, date of birth, height, weight, and color of eyes. (Specify State)</td>
<td></td>
</tr>
<tr>
<td>☐ 2. U.S. Military Card</td>
<td></td>
</tr>
<tr>
<td>☐ 3. Other (Specify document and issuing authority)</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List C</th>
<th>Documents that Establish Employment Eligibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐ 1. Original Social Security Number Card (other than a card stating it is not valid for employment)</td>
<td></td>
</tr>
<tr>
<td>☐ 2. A birth certificate issued by State, county, or municipal authority bearing a seal or other certification</td>
<td></td>
</tr>
<tr>
<td>☐ 3. Unexpired INS Employment Authorization Specify form</td>
<td></td>
</tr>
</tbody>
</table>

CERTIFICATION: I attest, under penalty of perjury, that I have examined the documents presented by the above individual, that they appear to be genuine and to relate to the individual named, and that the individual, to the best of my knowledge, is eligible to work in the United States.

Signature | Name (Print or Type) | Title |
Employer Name | Address | Date

Form I-9 (05/02/97)
OMB No. 1115-0136
U.S. Department of Justice
Immigration and Naturalization Service
Employment Eligibility Verification

NOTICE: Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A, which requires employers to verify employment eligibility of individuals on a form approved by the Attorney General. This form will be used to verify the individual's eligibility for employment in the United States. Failure to present this form for inspection to officers of the Immigration and Naturalization Service or Department of Labor within the time period specified by regulation, or improper completion or retention of this form, may be a violation of the above law and may result in a civil money penalty.

Section 1. Instructions to Employee/Preparer for completing this form

Instructions for the employee.

All employees, upon being hired, must complete Section I of this form. Any person hired after November 6, 1986 must complete this form. (For the purpose of completion of this form the term “hired” applies to those employed, recruited or referred for a fee.)

All employees must print or type their complete name, address, date of birth, and Social Security Number. The block which correctly indicates the employee’s immigration status must be checked. If the second block is checked, the employee’s Alien Registration Number must be provided. If the third block is checked, the employee’s Alien Registration Number or Admission Number must be provided, as well as the date of expiration of that status, if it expires.

All employees whose present names differ from birth names, because of marriage or other reasons, must print or type their birth names in the appropriate space of Section I. Also, employees whose names change after employment verification should report these changes to their employer.

All employees must sign and date the form.

Instructions for the preparer of the form, if not the employee.

If a person assists the employee with completing this form, the preparer must certify the form by signing it and printing or typing his or her complete name and address.

Section 2. Instructions to Employer for completing this form

(For the purpose of completion of this form, the term “employer” applies to employers and those who recruit or refer for a fee.)

Employers must complete this section by examining evidence of identity and employment eligibility, and:

- checking the appropriate box in List A or boxes in both Lists B and C;
- recording the document identification number and expiration date (if any);
- recording the type of form if not specifically identified in the list;
- signing the certification section.

NOTE: Employers are responsible for reverifying employment eligibility of employees whose employment eligibility documents carry an expiration date.

Copies of documentation presented by an individual for the purpose of establishing identity and employment eligibility may be copied and retained for the purpose of complying with the requirements of this form and no other purpose. Any copies of documentation made for this purpose should be maintained with this form.

Name changes of employees which occur after preparation of this form should be recorded on the form by lining through the old name, printing the new name and the reason (such as marriage), and dating and initializing the changes. Employers should not attempt to delete or erase the old name in any fashion.

RETENTION OF RECORDS.

The completed form must be retained by the employer for:

- three years after the date of hiring; or
- one year after the date the employment is terminated, whichever is later.

Employers may photocopy or reprint this form as necessary.
Part Four

Unlawful Discrimination

The new immigration law also prohibits discrimination. Under this law, if you have four or more employees, you may not discriminate against any individual (other than an unauthorized alien) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or, in the case of a citizen or intending citizen, because of his or her citizenship status.

Title VII of the Civil Rights Act of 1964 and the remedies against discrimination it provides also remain in effect. Title VII prohibits discrimination against any individual on the basis of national origin in hiring, discharge, recruitment, assignment, compensation, and other terms and conditions of employment with respect to employers subject to its coverage. Claims of national origin discrimination against employers with fifteen or more employees should be filed with the Equal Employment Opportunity Commission.

Under the new immigration law, charges of national origin discrimination against employers with four through fourteen employees and charges of citizenship discrimination against employers with four or more employees should be filed with the Office of Special Counsel in the Department of Justice. Discrimination charges may be filed either by persons who believe they were discriminated against in employment on the basis of national origin or citizenship status (or by a person on their behalf) or by INS officers who have reason to believe that discrimination has occurred. Discrimination charges must be filed within 180 days of the discriminatory act. The Office of the Special Counsel will notify the employer by certified mail within ten days upon receipt of a charge of discrimination. After investigating the charge, the Special Counsel may file a complaint with an administrative law judge. If the Special Counsel does not file a complaint within 120 days of receiving the charge, the person making the charge (other than an INS officer) may initiate filing a complaint with an administrative law judge. The administrative law judge will conduct a hearing and issue a decision.

Employers found to have engaged in discriminatory practices under the new immigration law will be ordered to stop the prohibited practice. They may also be ordered to hire, with or without back pay, individuals directly injured by the discrimination; pay a fine of up to $1,000 for each individual discriminated against (up to $2,000 for each such individual in cases of employers previously fined); and keep certain records regarding the hiring of applicants and employees. If a court decides that the losing party's claim has no reasonable basis in fact or law, the court may award attorneys' fees to prevailing parties other than the United States.

For more information concerning the antidiscrimination section of the new immigration law, write the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 65490, Washington, D.C. 20035-5490 or call (202) 653-8121.

For more information on Title VII and policies and procedures of the Equal Employment Opportunity Commission, call 1-800-USA-EEOC.

Part Five

Penalties for Prohibited Practices

1. Civil Penalties

If an investigation reveals that an employer has violated the new immigration law with respect to employees hired after November 6, 1986, INS may take action. During the first year of implementation (June 1, 1987–May 31, 1988) INS will continue to assist employers in complying with the law. In addition, INS will only issue a citation for first violations. Further violations during this period may result in the penalties described below. When INS intends to impose these penalties, the Service must issue a Notice of Intent to Fine. Employers who receive a Notice may request a hearing before an administrative law judge. If a hearing is not requested within 30 days, the penalty will be imposed. After May 31, 1988, INS will no longer issue warning citations, and first violations may result in penalties.

- Hiring or continuing to employ unauthorized employees. Employers determined to have knowingly hired unauthorized employees (or to be continuing to employ persons knowing that they are or have become unauthorized) may be fined as follows:
  - First Violation. Not less than $250 and not more than $2,000 for each unauthorized employee.
  - Second Violation. Not less than $2,000 and not more than $5,000 for each unauthorized employee.
  - Subsequent Violations. Not less than $3,000 and not more than $10,000 for each unauthorized employee.

- Failing to comply with record-keeping requirements. Employers who fail to properly complete, retain, and present for inspection the Form I-9 as required by law may face civil fines of not less than $100 and not more than $1,000 for each employee for whom the Form was not completed, retained, or presented. In determining penalties, consideration shall be given to the size of the business, good faith efforts to comply, the seriousness of the violation, and whether the violation involved unauthorized employees.

- Requiring indemnification. 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, either to the person who was required to pay the indemnity, or, if that person cannot be located, to the United States Treasury.

- Recruiting unauthorized seasonal agricultural workers outside the United States. Employers who knowingly recruit unauthorized workers outside the United States to perform seasonal agricultural labor may face the same penalties as for hiring unauthorized workers, unless the workers recruited have been granted Special Agricultural Worker (SAW) status.
2. Criminal Penalties.

- Engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized employees. 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 $3000 per employee and/or six months imprisonment. The same penalties apply to engaging in a pattern or practice of recruiting unauthorized seasonal agricultural workers outside the United States. Criminal sanctions will be reserved for serious or repeated violations.

- Engaging in fraud or false statements, or otherwise misusing visas, immigration permits, and identity documents. 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 or fined or both.

Part Six

Timetable for Employer Verification Requirements

December 1, 1986 through May 31, 1987

Public Education Period. This is an initial period established by law for the publication of regulations and dissemination of forms and information. During this period, citations are not issued and fines are not levied.

June 1, 1987 through May 31, 1988

Citation Period. This is a one-year period for public education, voluntary compliance and initial enforcement. INS will work with employer associations, labor unions, and others to provide assistance, develop voluntary cooperation, and encourage efforts to hire legal employees. Penalties are not imposed for first-offense violations during this time. Instead, a warning citation is issued which explains the nature of the violation. For subsequent or repeated violations, civil or in some cases criminal penalties can be imposed.

June 1, 1987 through September 1, 1987

Special Rule Period. Employers may hire or continue to employ employees who attest on the Form I-9 that they have applied or intend to apply for legalization, Special Agricultural Worker, or Cuban/Haitian status even if the workers have not yet received work authorization documents from the INS.

June 1, 1988

Effective Date for Full Enforcement. As of this date, citations will no longer be issued for first violations. Employers who violate the law may face civil or criminal penalties.

June 1, 1987 through November 30, 1988

Deferral Period for Employers of Seasonal Agricultural Workers. Penalties will not apply to employers of seasonal agricultural workers during this period. This deferral does not apply to the prohibition against recruitment of unauthorized employees who are outside the United States. As of December 1, 1988, INS will begin full enforcement of the law with respect to these agricultural employers.
Part Seven

Instructions for Recruiters and Referrers for a Fee

The provisions of the new law that apply to employers also apply to those who recruit persons and refer them to potential employers in return for a fee and those who refer or provide documents or information about persons to employers in return for a fee. The provisions do not apply to persons who recruit for their own company or business. In addition, union hiring halls that refer union members or non-union individuals who pay membership dues are not considered to be recruiters or referrers for a fee.

Recruiters and referrers for a fee are not required to verify the status of persons referred between November 6, 1986, and May 31, 1987. Starting June 1, 1987, they should complete Form I-9 when a person they refer to an employer is hired by that employer. The Form should be completed within three business days of the hire.

Recruiters and referrers for a fee may also refer individuals covered by the "special rule" and should follow the procedures for completing the Form I-9 on page 4.

Recruiters and referrers may designate agents to complete the verification procedures on their behalf, such as national associations, or employers. If the employer who hires the referred individual is designated as the agent, the employer needs only to provide the recruiter or referrer with a photocopy of the Form I-9. Recruiters or referrers who designate someone to complete the verification procedures on their behalf are still responsible for compliance with the law and may be found liable for violations of the law.

Recruiters and referrers must retain the Form I-9 for three years after the date the referred individual was hired by the employer. They must also present Forms for inspection to an INS or DOL officer after three days advance notice.

The penalties described in Part Five apply to recruiting and referring unauthorized employees for a fee which occurs on or after June 1, 1987.

Part Eight

Some Questions You May Have About the Form I-9

Q. Do United States citizens need to prove they are eligible to work?
A. Yes. While United States citizens are automatically eligible for employment, they too must provide the required documents and complete the Form I-9.

Q. Do I need to complete an I-9 for everyone who applies for a job with my company?
A. No. You need to complete I-9's only for people you actually hire. For purposes of the new law, a person is "hired" when he or she begins to work for you.

Q. If someone accepts a job with my company but will not start work for a month, can I complete the I-9 when the employee accepts the job?
A. Yes. While the law requires you to complete the I-9 when the person actually begins working, you may complete the Form when he or she accepts the job.

Q. Do I need to fill out an I-9 for independent contractors or their employees?
A. No. For example, if you contract with another company to provide temporary secretarial services, you do not have to complete I-9's for that company's employees. The other company is responsible for completing the I-9's for its own employees. However, you must not knowingly use contract labor to circumvent the law against hiring unauthorized workers.

Q. Do I need to complete an I-9 for people I hired after November 6, 1986, if they left the job before June 1, 1987?
A. No.

Q. Does the new law apply to my current employees if I hired them before it was passed?
A. No. You are not required to verify status or complete I-9's for current employees hired before November 7, 1986. However, if you choose to complete I-9's for these employees, you should do so for all your current employees hired before November 7, 1986.
Q. What if a current employee was hired before November 7, 1986, but has recently taken an approved leave of absence?

A. You do not need to complete an I-9 for that employee if he or she was temporarily absent from work for approved paid or unpaid leave, strike, or temporary layoff, or was transferred to another location of your business. However, if you rehire an employee who quit or was terminated, you should complete the employment verification process as you would for others hired after November 6, 1986. You must also verify employment eligibility and complete an I-9 if an employee leaves or is removed from the United States because of an order by a judge or INS.

Those conditions also apply to employees hired after November 6, 1986. Once you have completed an I-9 for those employees, you will not need to fill out a new Form if they have a temporary absence for approved leave, strike, layoff, or transfer.

Q. Will I be subject to employer sanctions penalties if a current employee I hired before November 7, 1986, is an illegal alien?

A. No. You will not be subject to employer sanctions penalties for merely retaining in your workforce an illegal alien hired before November 7, 1986. The fact that an illegal alien was on your payroll before November 7, 1986, does not give him or her any right to remain in the United States. Unless the alien is legalized or otherwise obtains permission from INS to remain in the United States, he or she is subject to apprehension and removal.

Q. What should I do if illegal alien employees ask me to help them in legalizing their status?

A. You can assist past and present employees who may qualify by providing documentation of employment history. Employment documentation furnished by employees and presented by legalization applicants will be used only to determine the applicant’s eligibility for legal status. The government will not use the documents against the employer except in cases of fraud by the employer.

If aliens do not know how to apply for legal status, they may be able to get help from various organizations, such as churches, community groups, or business associations, which have been designated by INS to advise aliens and help them prepare applications.

You can also advise them that the Internal Revenue Service (IRS) may be able to provide them with documentation to verify residence. To obtain this documentation, employees should contact IRS in person or by correspondence to the service center where they filed their tax return(s). A letter to IRS should include name, address of filing, social security number (both spouses’ numbers if a joint return was filed), tax year or years required and copies of any correspondence received from IRS relating to the requested years. IRS will then issue them a Form 6166 (Certification of Filing a Tax Return) if the tax information is verifiable.

Q. May I specify which documents I will accept for verification?

A. No. You must accept any document or combination of documents listed on the I-9 or in Part Nine of this Handbook that appear to be genuine.

Q. What should I do if the person I hire is unable to provide the required documents within three days?

A. If an employee is unable to provide the required document or documents within three days he or she must at least produce a receipt showing that he or she has applied for the document. The employee must produce the document itself within 21 days of the hire.

Q. What is my responsibility concerning the authenticity of documents?

A. You should examine the documents and if they appear to be genuine on their face and to relate to the person, you should accept them. If on their face the documents do not appear to be genuine or to relate to the person, you should not accept them. In addition, if the work authorization documents carry restrictions, you should abide by them.

You should also be aware that any social security number starting with a “9” is an invalid number. Employees who are using such numbers should be instructed to get a proper social security number using Form SS-5, available from the Social Security Administration.

Q. What identity documents are acceptable for minors?

A. If the minor does not have any of the identity documents listed in Part Nine, he or she does not have to produce an identity document if a parent or legal guardian completes the appropriate sections of the Form for the minor.

Q. When do I fill out the I-9 if I hire someone for less than three days?

A. You do need to complete an I-9 before the end of the employee’s first working day. However, if the person is providing intermittent domestic service in your home, you do not need to complete an I-9.

Q. What if the person I hire after November 6, 1986, is an illegal alien who has applied or intends to apply for legalization?

A. There is a “special rule” for these applicants. Up until September 1, 1987, you should fill out the I-9 as illustrated on page 4. After September 1, 1987 even these aliens must provide work authorization documents and you should update the I-9 to reflect the authorization.

Q. What if I rehire someone who previously filled out an I-9?

A. You do not need to complete a new I-9 if you rehire the person within three years of the initial hire, and the information on the Form indicates that the person is still authorized to work.
Q. Do I need to complete a new I-9 when one of my employees is promoted within my company or transfers from one of my company's offices to another at a different location?

A. No. You do not need to complete a new I-9 if the employee is promoted or transferred within your company.

Q. What do I do when an employee's work authorization expires?

A. You will need to update the I-9 if you want to continue employing the person. At that time, the employee must present a document that either shows an extension of employment eligibility or that is a new grant of work authorization. If the employee cannot produce such a document, that person is no longer eligible to work. Continuing to employ that person is a violation of the law, even if the employee was previously authorized to work.

Q. As an employer, do I have to fill out all the I-9's myself?

A. No. You may designate someone to fill out the Form for you such as a personnel officer, foreman, agent, or anyone else acting in your interest. However, you are still responsible for compliance with the new law.

Q. Can I contract with someone to complete I-9's for my business?

A. Yes. You can contract with another person or business to verify employees' work eligibility and complete the I-9's for you. If you do so, of course, you are still responsible for the contractor's actions and could be liable for any violations of the new law.

Q. As an employer, can I negotiate my responsibility to complete the I-9's in a collective bargaining agreement with a union?

A. Yes. However, you are still responsible for compliance with the new law.

Q. When I review the identity and work authorization documents, should I make photocopies of them?

A. The law does not require you to photocopy documents. However, if you wish to make photocopies, you must retain them with the I-9. Photocopies must not be used for any other purpose.

Q. What are the requirements for retaining the I-9?

A. You must retain the Form for at least three years. If you employ the person for more than three years, you must retain the Form for one year after the person leaves your employment.

Q. Will I get any advance notice if an INS or DOL officer wishes to inspect my I-9's?

A. Yes. The officer will give you at least three days advance notice before the inspection. He or she will not need to show you a subpoena or warrant at that time. Failure to provide the I-9's for inspection could result in civil money penalties.

Q. What happens if I do everything the new law requires and INS discovers that one of my employees is not actually authorized to work?

A. Unless the government can show that you had actual knowledge of the illegal status of the employee, you will have an affirmative defense against the imposition of employer sanctions penalties if you have done the following things:

- Had employees fill out their part of the I-9 when they started to work;
- Checked the required documents (they should appear to be genuine and to relate to the individual);
- Properly completed the I-9;
- Retained the Form for the specified time; and
- Presented the Form upon request to an INS or Department of Labor officer. You will receive at least three days advance notice.

Q. How can I avoid discrimination while complying with the new immigration law?

A. Employers can avoid discrimination by applying the verification procedures of the Act to all newly hired employees and by hiring without respect to the national origin or citizenship status of those authorized to work in the United States. Seeking identity and employment eligibility documents only from individuals of a particular national origin or from those who appear or sound foreign violates the new immigration law and may also be a violation of Title VII of the Civil Rights Act of 1964. Employers should not discharge present employees, refuse to hire new employees, or otherwise discriminate on the basis of foreign appearance, language, or name. It is also a violation of Title VII to discriminate against employees or applicants for employment on the basis of national origin.

Q. I have heard that state employment agencies can certify that people they refer are eligible to work. Is that true?

A. Yes. State employment agencies may elect to provide in individuals they refer to employers with a certification of employment eligibility. If one of these agencies refers potential employees to you and an employee presents you with one of these certifications, you do not have to check documents or complete an I-9 if you hire that person. However, you must retain the certification as you would an I-9 and present it for inspection if requested. Employers who hire people referred by state employment agencies should become familiar with what an authorized state employment agency certification looks like.
Q. Where can I get the Form I-9?
A. There are two copies of the Form I-9 in this Handbook. If you need more, you can photocopy or print the Form. You may obtain a limited number of copies from INS. Or you may order them in bulk from the Superintendent of Documents at the following address:

Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402
Tel. (202) 783-3238

Q. What if one of my employees tells me that his or her Social Security Number is invalid?
A. You should tell the employee to get a proper Social Security Number by completing a Form SS-5. This Form is available from the Social Security Administration. You do not need to amend your employment tax returns. However, when the employee gives you the new number, you should file Form W-2C with the Social Security Administration for the years in which you reported income and withholding under the incorrect number.

Q. What advice should I give to my employees applying to legalize their status concerning their Federal Tax obligations?
A. You can advise employees that when they apply to INS for permanent resident status, they will be given an IRS publication explaining requirements for filing Form W-4 or W-4A to insure correct withholding of tax on wages, procedures for correcting prior year tax records (if an invalid social security number was used) and other guidelines relating to tax benefits.

Q. What advice should I give to newly-hired employees who ask about their Federal income tax obligations?
A. First, you can tell them it is important to have a valid social security number and to properly complete a W-4 or W-4A so that the employer can withhold the proper amount for income tax. Second, you can encourage employees to apply for social security numbers for their dependent children who will be five years old or older by the end of the year. Beginning in 1987, such numbers are required to be provided for dependents claimed on tax returns.

Part Nine

Acceptable Documents for Verifying Employment Eligibility

The following documents have been designated for determining employment eligibility by the Immigration Reform and Control Act of 1986 and the implementing regulations. As stated in Part Two, the employee will need to provide a document or documents that establish identity and employment eligibility. A complete list of acceptable documents is given on the next page. Samples of many of the acceptable documents appear on the following pages.

Some documents establish both identity and employment eligibility. These are listed on the Form I-9 under List A, "Documents that Establish Identity and Employment Eligibility."

If a person does not provide a document from List A he or she must provide one document that establishes identity and one document that establishes employment eligibility.

In order to establish identity, the person must provide a state-issued driver's license, a state-issued identification card, or one of the other documents in List B.

In order to establish employment eligibility, the person must provide a Social Security card, a United States birth certificate, or one of the immigration documents in List C.

If an employee is unable to provide the required document or documents within three days, he or she must at least produce (within three days) a receipt showing that he or she has applied for the document. The employee must produce the document itself within 21 days of the hire.
LIST A
Documents That Establish Identity and Employment Eligibility
- United States Passport
- Certificate of United States Citizenship. (INS Form N-560 or N-561)
- Certificate of Naturalization. (INS Form N-550 or N-570)
- Unexpired foreign passport which:
  - Contains an unexpired stamp which reads "Processed for I-551. Temporary Evidence of Lawful Admission for permanent residence. Valid until _______. Employment authorized;" or
  - Has attached thereto a Form I-94 bearing the same name as the passport and contains 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 I-94.
- Alien Registration Receipt Card (INS Form I-151) or Resident Alien Card (INS Form I-551), provided that it contains a photograph of the bearer.
- Temporary Resident Card. (INS Form I-688)
- Employment Authorization Card. (INS Form I-688A)

LIST B
Documents That Establish Identity
For individuals 16 years of age or older:
- State-issued driver's license or state-issued identification card containing a photograph. 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.
- School identification card with a photograph
- Voter's registration card
- United States Military card or draft record
- Identification card issued by federal, state or local government agencies
- Military dependent's identification card
- Native American tribal documents
- United States Coast Guard Merchant Mariner Card
- Driver's license issued by a Canadian government authority

For individuals under age 16 who are unable to produce one of the documents listed above:
- School record or report card
- Clinic doctor or hospital record
- Daycare or nursery school record

Note.—Illustrations of the documents on Lists A, B, and C appear in the Handbook but are not reproduced in the Federal Register.

LIST C
Documents That Establish Employment Eligibility
- Social Security number card, other than one which has printed on its face "not valid for employment purposes."
  Note: This must be a card issued by the Social Security Administration, a facsimile (such as a metal or plastic reproduction that people can buy) is not acceptable.
- An original or certified copy of a birth certificate issued by a state, county, or municipal authority bearing an official seal
- Unexpired INS employment authorization
- Unexpired re-entry permit. (INS Form I-327)
- Unexpired Refugee Travel Document. (INS Form I-571)
- Certification of Birth issued by the Department of State. (Form FS-545)
- Certification of Birth Abroad issued by the Department of State. (Form DS-135)
- United States Citizen Identification Card. (INS Form I-197)
- Native American tribal document
- Identification Card for use of Resident Citizen in the United States. (INS Form I-179)
How to Obtain More Information

If you have questions after reviewing this Handbook, you may obtain information from one of the following local INS offices. Direct your letter to the attention of the Employer Relations Officer.

<table>
<thead>
<tr>
<th>State</th>
<th>Address</th>
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<tbody>
<tr>
<td>ALABAMA</td>
<td>75 Spring Street S.W. Atlanta, GA 30303</td>
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<tr>
<td>ALASKA</td>
<td>701 &quot;C&quot; Street, Room D-251, Lock Box 16, Anchorage, AK 99513</td>
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<tr>
<td>ARIZONA</td>
<td>230 North First Avenue Phoenix, AZ 85013</td>
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<tr>
<td>ARKANSAS</td>
<td>701 Loyola Avenue, Room T-8005 New Orleans, LA 70113</td>
</tr>
<tr>
<td>CALIFORNIA</td>
<td>300 North Los Angeles Street Los Angeles, CA 90012</td>
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<tr>
<td>COLORADO</td>
<td>1787 Federal Building 1961 Stout Street Denver, CO 80202</td>
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<tr>
<td>CONNECTICUT</td>
<td>JFK Federal Building Government Center Boston, MA 02203</td>
</tr>
<tr>
<td>DELAWARE</td>
<td>801 Market Street Room 1221, U.S. Courthouse Philadelphia, PA 19106</td>
</tr>
<tr>
<td>DISTRICT OF COLUMBIA</td>
<td>4420 North Fairfax Drive Arlington, VA 22203</td>
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<tr>
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<tr>
<td>IDAHO</td>
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<tr>
<td>ILLINOIS</td>
<td>219 South Dearborn Street Chicago, IL 60604</td>
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<tr>
<td>INDIANA</td>
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<tr>
<td>IOWA</td>
<td>Federal Building, Room 1008, South 12th Street, Omaha, NE 68102</td>
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<tr>
<td>KANSAS</td>
<td>747 North Conant Avenue Kansas City, MO 64153</td>
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<tr>
<td>LUSASIANA</td>
<td>JFK Federal Building Government Center Baton Rouge, LA 70801</td>
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<tr>
<td>MICHIGAN</td>
<td>333 Mount Elliott Street Detroit, MI 48207</td>
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<td>NEW JERSEY</td>
<td>970 Broadway Newark, NJ 07107</td>
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<tr>
<td>NEW MEXICO</td>
<td>343 U.S. Courthouse P.O. Box 9398 El Paso, TX 79998</td>
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<tr>
<td>NEW YORK</td>
<td>68 Canal Street Buffalo, NY 14202</td>
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<tr>
<td>OHIO</td>
<td>1240 East 9th Street, Room 1917 Cleveland OH 44119</td>
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<tr>
<td>OKLAHOMA</td>
<td>Federal Building, Room 6A 21 1100 Commerce Street Dallas, TX 75242</td>
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<tr>
<td>OREGON</td>
<td>511 N.W. Broadway Portland, OR 97209</td>
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<tr>
<td>PENNSYLVANIA</td>
<td>601 Market Street Room 1321, U.S. Courthouse Philadelphia, PA 19106</td>
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<td>PUERTO RICO</td>
<td>GPO Box 5006 San Juan, Puerto Rico 00936</td>
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<td>JFK Federal Building Government Center Providence, RI 02903</td>
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<tr>
<td>VERMONT</td>
<td>P.O. Box 578, Downtown Station Portland, ME 04112</td>
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<td>VIRGINIA</td>
<td>4420 North Fairfax Drive Arlington, VA 22203</td>
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<tr>
<td>VIRGIN ISLANDS</td>
<td>GPO Box 5006 San Juan, Puerto Rico 00936</td>
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<tr>
<td>WASHINGTON</td>
<td>815 Airport Way South Seattle, WA 98134</td>
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<tr>
<td>WEST VIRGINIA</td>
<td>601 Market Street Room 1321, U.S. Courthouse Philadelphia, PA 19106</td>
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<tr>
<td>WISCONSIN</td>
<td>219 South Dearborn Street Chicago, IL 60604</td>
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For Employer Information
Call this toll-free number: 1-800-777-7700
To: Personnel Directors, State-operated Campuses

From: Office of the Provost and Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Immigration Reform and Control Act of 1986 Compliance

Your attention is called to Memorandum to Presidents Vol. 87, No. 2, dated April 20, 1987, concerning the new Immigration Reform and Control Act of 1986 ("IRCA"), a copy of which is attached for your information. The IRCA imposes significant new responsibilities on all public and private employers.

The purpose of this memorandum is to provide you with more detailed and technical information on the law's requirements. Much of the advice contained herein is based upon proposed regulations issued by the Immigration and Naturalization Service on March 19, 1987. Pertinent sections of these proposed regulations are attached. When these regulations are promulgated in final form, a follow up memorandum will be sent to you.

In developing procedures to comply with IRCA and its implementing regulations, the following specific requirements or problems should be addressed:

- Part-time or temporary employees. The law affects all employees whether full-time or part-time, U.S. citizen or alien. Students who are employed by the campus, for example work-study students, are also included. I-9 forms must be completed by both employer and employee for all individuals hired after November 6, 1986. Advisories should be sent to all campus officials or department heads who are in a position to employ staff, informing them of the verification requirement and the need to insure that employees are authorized to work.

- Reverification. If an employee's work authorization is time-limited, i.e., H-1 visa which expires in one year, a new I-9 must be completed prior to expiration of the visa evidencing an extension of work authorization.
- Records Retention. I-9s should be kept in the employee's personnel file and retained for 3 years or for one year after the employee leaves the University payroll, whichever is later.

- Acceptable Documents. On the I-9 the employer must attest that: 1) it has physically examined the documents presented by the employee; 2) they appear on their face to be genuine; and 3) the employee is eligible for employment. The employee must sign the I-9 also, indicating that he or she is authorized to work in the United States.

IRCA specifies the sole documents which can be accepted as proof of employment authorization and identity (both elements must be established).

Documents establishing both authorization and identity:

- U. S. Passport

- Certificate of Citizenship
  (INS Form N-560)

- Certificate of Naturalization
  (INS Form N-550)

- Foreign Passport with unexpired INS endorsement of employment authorization

- Alien Registration Receipt Card
  ("the green card")

- Temporary Resident Card (I-688)
  or Employment Authorization Card
  (I-688A)

Documents establishing employment authorization alone:

- Social Security Card

- U. S. Birth Certificate

- Report of U. S. Citizen Birth Abroad (State Department issued)

- Unexpired Refugee Travel Document
  (I-571)

- Unexpired Re-entry Permit (I-327)
Documents establishing identity alone:

- Drivers License with photo or other identifying information
- Other State-issued identification card with photo

**Three Day Grace Period.** The proposed regulations under IRCA create a presumption that an employer is in compliance for the first 3 business days after the employee is hired to allow that time for production of documents. In order to insure that an employee need not be removed from the payroll after 3 days if the required documentation of employment authorization is not produced, request and obtain this documentation at the earliest possible time and certainly no later than the date the employee goes on the payroll. To avoid having unfilled positions at the beginning of an academic year, it may be appropriate to obtain documents prior to or contemporaneously with making an offer of employment.

**Visa categories.** In general, aliens who are authorized to work may be placed in three categories:

1. Those authorized employment as an incident to status
   
   In this category are permanent resident aliens, refugees and asylees

2. Those whose employment authorization is restricted and limited as to employer or work place

The following visa statuses are included in this category:

- Non-immigrant visitor for business (B-1)
- Non-immigrant student (F-1) (part-time, on campus employment only unless INS permission is obtained)
- Temporary worker (H-1) (time- and employer-limited)
- Exchange visitor (J-1) (program- and time-limited)
3. Those who may apply for and receive work authorization from the INS

The following visa statuses may be found in this category:

- Non immigrant student (F-1) (time-limited)
- Alien spouse of an exchange visitor (J-2) (time-limited)
- Alien who has properly filed an application for adjustment of status to permanent resident alien (one year limit)

Since aliens with these visas may have employer- or time-restricted work authorization, you must insure when hiring an alien in any of these categories that their employment by your campus is consistent with any time and work place restrictions. Reverification requirements make this information particularly important.

- Non-Discrimination. IRCA creates the immigration-related unfair employment practice (IRUEP). After November 6, 1986 it is unlawful to discriminate against any individual, other than an unauthorized alien, with respect to hiring or discharge because of an individual's national origin. If a charge of national origin discrimination would be covered by Title VII of the Civil Rights Act, it is not covered by IRCA. It is also not an IRUEP to give preference in employment to a U. S. citizen or national over an alien if the two job candidates are equally qualified. A complaint of IRUEP can be filed with the EEOC or with a new Special Counsel in the U. S. Department of Justice.

In order to assist you in complying with IRCA, a session on the law has been planned for the spring Personnel Officers meeting. Additionally, a second memorandum will provide further advice and clarification in this area when final regulations are issued by INS.

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Attachments