Proving Work Authorization and Reverification

APRIL 2009

► Why does my employer ask for papers showing work authorization?

Since 1986, the immigration law requires employers to only hire workers who have authorization by the U.S. government to work in this country. The law requires employers to check (verify) the identity and work eligibility of each employee. That is why all employees, not only immigrants, must complete an I-9 Form (Employment Eligibility Verification Form). Some employers also use E-Verify, which is a voluntary, internet-based program that allows participating employers to electronically verify the work eligibility of all new hires with the Department of Homeland Security (DHS) and the Social Security Administration (SSA). Employers that are registered for E-Verify should use the electronic system only after the worker has been hired and after completing the I-9 process. Some employers are also registered for the Social Security Number Verification Service (SSNVS), which is administered by the SSA but does not verify a person's work authorization. The SSNVS can only verify that the Social Security number provided by the worker matches SSA's records.

► Does the employer send the information to immigration?

No, but the employer is required to keep the completed I-9 Forms on file for a specific period of time and must show them if requested by Immigration or other government authorities. Employers can make copies of the documents you choose to show, but they are not required to. If the employer decides to make copies, it must do so for all workers, and only documents presented by immigrant workers. Note: if the employer is using E-Verify, that information will be shared with DHS.

► When and how do I have to show my work authorization to my employer?

Your employer must ask you to complete the I-9 Form within 3 days of beginning your job. The I-9 Form lists documents that you can show to establish your identity and employment eligibility. You the worker, not the employer, have the right to choose which of the listed documents you are going to show the employer. It is unlawful for your employer to demand that you show a specific document only, or to ask that you present more documents than the ones that are required. For example, your employer cannot demand that you show a green card, if you have other documents listed on the I-9 Form showing that you are authorized to work in the U.S. The employer might be engaging in a type of discrimination called "document abuse" if the employer does not allow you to choose which documents to show. Talk to an immigrant rights organization, a worker center, your union, or call the number below if you think that your employer is breaking this law. You may also contact the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) at 1-800-255-7688 or 1-800-237-2515 to report potential discrimination by an employer. Note that if your employer is participating in E-Verify, you will be required to provide your employer with your Social Security number and the document that you show to establish identity must contain a photograph.

The U.S. Citizenship and Immigration Services (USCIS) issued a new I-9 form on November 26, 2007, that limited the number of documents employers can accept that show both the worker's identity and employment eligibility (also known as the List A documents that are listed on the back of the I-9 form). The new form reduces the list of acceptable documents under "List A." All employers should be using the new I-9 form as of December 26, 2007. But, employers should not complete a new amended I-9

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form and reverify work authorization documents for current employees for whom the employer already has a completed I-9 form on file. Doing so could be considered unlawful discrimination.

► What if my work permit expires before I receive my renewal?

If you have a work permit that expires, you should always apply for an extension of your work permit at least 90 days before it expires. This is because immigration may take a long time to renew it. If you have been waiting for your new work permit for more than 90 days (you filed for an extension more than 90 days ago), you may be eligible to receive work authorization for 240 days because of the delay of the federal government is issuing your renewed work permit. In limited instances, a receipt may serve as a document pending issuance of new work authorization. Those instances include:

- A receipt for a renew document when the document has been lost, stolen, or damaged. The receipt is valid for 90 days, after which the individual must present the replacement document to complete the Form I-9. Note that this rule does not apply to individuals who present receipts for new documents following the expiration of their previously held document.
- A Form I-94 containing a temporary I-551 stamp and a photograph of the individual, which is considered a receipt for the Form I-551, Permanent Resident Card. The individual must present the Form I-551 by the expiration date of the temporary I-551 stamp, or within one year from the date of issuance of the Form I-94 if the I-551 stamp does not contain an expiration date.
- A Form I-94 containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (i.e., Form I-766 or I-688B) or a combination of an unrestricted Social Security card and List B document. The employee must present acceptable documentation to complete the Form I-9 within 90 days after the date of hire or, in the case of reverification, the date employment authorization expires.

In certain instances, an expired work permit can satisfy the reverification requirement, such as if you have Temporary Protected Status ("TPS") and your status has been extended by the U.S. government. If you have problems (such as your employer won't let you continue working), call the above OSC hotline number. In other instances in which your work permit expires and you have not received your renewal, and you are not covered by the "special receipt rules," and your employer wants to fire you, you should contact an immigrant rights organization or if you are represented by a union, contact your union representative. Depending on your Collective Bargaining Agreement, your union may ask your employer to place you on an unpaid leave of absence for a reasonable period of time pending the receipt of your new work permit.

► What if my I lose my immigration or work authorization documents?

Your employer must accept the receipt for a replacement document when your original document was stolen, damaged or lost. If you have problems (such as your employer won't let you continue working), call the above OSC hotline number.

► Can my employer ask me for my work documents again?

In certain instances, an employer must ask workers to show their work authorization documents again (after you already filled out the I-9 Form when you were hired) if the work authorization document you presented had an expiration date. This is called "reverification," because the employer is checking again to make sure you are still authorized to work. For example, if at the time you were hired you showed a work permit that has an expiration date then on or before that expiration date, the employer must ask you to show that you are still authorized to work in the U.S. Once again, it is your choice which document(s) to present to prove that you can continue working. That is, the employer cannot require you to present

another work permit with the new expiration date as long as you have other documents that establish your continued work authorization.

If you have shown documents that prove that you are a lawful permanent resident (you have a green card) then an employer should not ask for documents again. For example, just because your green card has an expiration date, it only means that your card needs to be renewed not that your work authorization has expired. Your employer should not ask for your documents again since you have authorization to work in the U.S. permanently based on your status. Similarly, if you have been granted asylum, you are authorized to work indefinitely so it is a good idea to present documents that satisfy the I-9 Form but that don't have an expiration date. For example, you can show an identification card or driver's license to establish your identity and an unrestricted Social Security card which only bears your name and Social Security number (without the legend "valid for work only with DHS authorization").

Also, you are considered to be a "continuing employee" and the employer should NOT require you to re-verify your work authorization in the following circumstances:

- If you are on strike or have complained about your work conditions
- When you return after have been temporarily laid off for lack of work as long as it has not been more than 3 years
- As punishment if you are engaged in union related activities or coming together to speak out a work condition you don't like
- After a temporary leave approved by the employer such as a family or medical leave
- Just because you were promoted, demoted or got a pay raise
- If you are transferred to a different unit of the same company
- If you are reinstated to your job because of a decision of a labor arbitrator or other decision

Your employer should not reverify (ask to see your documents again) in these cases.

Your employer can reverify work authorization documents for the entire workforce so long as all workers are treated the same. It is against the law for the employer to reverify work authorization documents of only certain or specific workers if the employer has the intent to discriminate against those workers because of their immigration status (such as not being a U.S. citizen) or national origin. But, absent the "intent" to discriminate, an employer may reverify the work authorization documents of all workers equally if it chooses to do so.

► How do I know if I am eligible for an "unrestricted" Social Security card?

If you have a Social Security card that says that you have to show a separate immigration document to prove that you can work (your card says "valid for work only with DHS authorization"), you may now be eligible for an unrestricted card (a card with just your name and Social Security number). You are eligible for a new, unrestricted Social Security card if you have been granted permanent immigration status like asylum or lawful permanent residence (green card). You should also apply for this new Social Security card if you become a U.S. citizen. You will have to fill out a form (SS-5). The application is free, but you should apply in person at the SSA office, because you will need to show your original immigration documents, and you should never mail original documents.

► What can I do to enforce my rights?

If you believe your employer committed document abuse, or reverified your work documents when he or she shouldn't have, call an immigrant rights group, worker center, or contact your union representative if you are part of a union. You can also call the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), which is a part of the U.S. Department of Justice, Civil Rights Division. OSC helps immigrant workers whose employers have discriminated against them when they show that

they are allowed to work in the U.S. OSC is NOT a part of immigration, and can often assist workers by contacting their employers to correct improper behavior. No one who calls OSC's hotline will be referred to immigration authrities. If you are believe you have been discriminated against on the basis of immigration status or national origin, you may be able to file a charge against your employer. Your union or an advocate from an immigrant rights group may be able to help you with this charge.

You can contact them at 1-800-255-7688 or, for TDD 1-800- 237-2515 (both numbers are free). You also can write the OSC at:

Civil Rights Division
Office of Special Counsel for Immigration-Related Unfair Employment Practices
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