



# The Guardian



Helping to Protect You from Employment Law Claims

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## I-9 TIPS TO AVOID COSTLY PENALTIES

By: **Donald C. Zavala, Jr.**

Beware: The U.S. Citizenship and Immigration Services is cracking down on Form I-9 violators! There are steep penalties that

can be imposed on employers for I-9 violations. What many employers do not realize is that these violations are not limited to the hiring of unauthorized workers. Poor documentation, including incomplete paperwork and improper record retention, can bring fines of \$1,000 per worker. With these severe penalties and the recent rise in I-9 audits, it is important to review your current I-9 procedures and to make sure that you are using the new I-9 form (see inset below). Keep in mind the following tips:

### NEW I-9 FORMS

On February 2, 2009, the Form I-9 was amended to make it clear that employers cannot accept expired documents as proof of identification or work authorization and to reduce the number of acceptable documents that employees can present to show work authorization.

On August 7, 2009, the USCIS amended the Form I-9 again. This amendment was due to an extension of the I-9 expiration date to August 31, 2012. On its website, the USCIS states that using an I-9 with a revision date of either August 7, 2009 or February 2, 2009 is acceptable. The Form I-9 can be uploaded at: [http://www.uscis.gov/file/form/i-9\\_cnmi.pdf](http://www.uscis.gov/file/form/i-9_cnmi.pdf)

1. Make sure that Section 1 of the I-9 form is completed and signed by the new employee on his or her first day of employment. The employer must complete and sign Section 2 within 3 days thereafter (but we recommend you do so on the employee's first day of employment). Section 3 must be completed only when an employee's work authorization is temporary and will soon expire.
2. Do not have an applicant fill out an I-9 form prior to making a job offer. Doing so can lead to allegations of discrimination if the applicant is not hired.
3. Carefully review each new hire's supporting documentation to make sure it is on the approved list of documents provided on the I-9 form.
4. Never insist that the employee provide only a specific document as long as the document provided is from the list attached to the I-9 form.
5. Be sure to establish a consistent policy for completing I-9 forms. Employers should ensure that all personnel involved in hiring be educated on this policy.
6. Do not rely on the expiration dates on I-9 documentation when hiring or firing.
7. Keep copies of all work authorization I-9 documentation separate from the employee's personnel file.
8. Create a tickler system to follow up on expiring documentation for temporary employment authorization.
9. All current employees must have an I-9 form on file. When an employee leaves his or her employment, the employee's I-9 form must be retained until either the expiration of 3 years after the employee's hire date or 1 year after the employee's employment ends, whichever is later.

### DID YOU KNOW?

**The EEOC has issued a new poster that most employers must display. The new poster includes information on the recently enacted Genetic Information Nondiscrimination Act (GINA) of 2008. GINA prohibits employers with 15 or more employees from discriminating against applicants and employees on the basis of genetic information, i.e., employees with genetic health issues or tendencies towards certain diseases. You can download the new poster for free on the U.S. Department of Labor website at: <http://www.dol.gov/ofccp/regs/compliance/posters/pdf/eeopost.pdf>**

**If you would like to have someone added to our mailing list or want your name removed, please contact Loreen at (928) 445-0122**

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