The federal I-9 form (https://www.uscis.gov/i-9) is used to verify a person's identity and eligibility to work in the United States at the time of hire. All employers are required to comply with the verification provisions. The I-9 form must be completed by and for all employees who are hired for pay. It does not apply to independent contractors, but employers need to ensure that they are properly classifying a person as a contractor as opposed to an employee.

The I-9 form requirement does apply to elected and appointed officials, even though they are “elected” as opposed to “hired.” There is no explanation provided by the U.S. Immigration and Naturalization Service (INS) as to why these officials are included, but the INS does require completion of the I-9 for elected and appointed officials if they receive compensation for their services. Elected judges and poll workers, however, are exempt from this requirement per U.S. Department of Justice Memo (Schroeder 02/18/1988) and Immigration and Customs Enforcement (ICE) policy (03/27/2014). (https://www.uscis.gov/faq-page/i-9-central-who-needs-complete-form-i-9#17071n47054).

Some of the important requirements related to the I-9 form, as provided in the Immigration Reform and Control Act of 1986 (IRCA), include the following:

1. Only the current version of the I-9 can be used. Each version has an expiration date, after which employers must obtain the newest version online and begin using it by the date indicated.

2. The form can be completed any time after an accepted offer, but the employee's portion of the form must be completed no later than the first day of employment, and the employer's section must be completed no later than 3 business days from the first day of employment.

3. There are a number of important document requirements, some of which include:
   a. Only documents on the Acceptable List can be used for identification purposes. Employees and new hires should read the list very carefully to ensure that they are using the appropriate documents. For example, it is important to note that List A documents can be used alone, but a document from List B and one from List C must be produced together. In addition, directions for completing the form must be followed exactly.
   b. The employee decides which documents to produce from those enumerated in the Acceptable List. Employees cannot be told what documents to bring.
   c. The employer must physically examine the documents produced by the employee, ensure that these documents are original and unexpired, and attest under penalty of perjury that this was done.
   d. I-9 forms must be retained for 3 years from date of hire, or 1 year following termination of employment, whichever is later. Best practice is to keep all I-9 forms in a separate file to assist in purging old forms and for ease of access in the event of an audit. The forms may be stored electronically.
   e. Reverification is required if an employee's work authorization expires or if an employee leaves employment and is later rehired.

A failure to comply with any of the I-9 requirements can be very costly. Fines for basic errors on completion of the form range from $110 to $1,100 per violation. Each error on the form counts as a violation, so these can quickly add up, particularly if an employer has multiple forms containing several errors, or is not using I-9 forms at all. In recent years,
The ICE has increased its enforcement activities, including a significant expansion of Form I-9 workplace audits.

Ideally, employers have a written I-9 compliance policy and all managers responsible for completing the form are trained on the policy and its requirements. The policy and training help to minimize errors on completing the form, and show an employer’s commitment to compliance in the event of a worksite audit. Employers should also annually, or on some other regular basis, conduct a self-audit of their I-9 forms.

Corrections can be made to I-9 forms. Employers are only permitted to correct errors on Sections 2 and 3 of the form. If there are errors on Section 1, the employee is the only person permitted to make those adjustments. The person responsible for fixing errors should date and initial the changes. If errors are extensive, the affected section should be redone on a new form and attached to the original I-9 form. An entirely new form can be completed if there are major corrections to be made (https://www.uscis.gov/i-9-central/complete-correct-form-i-9/correcting-form-i-9).

In addition to I-9 requirements, the IRCA also prohibits employers from knowingly hiring or continuing to employ persons who are not authorized to work in the U.S. Additionally, IRCA prohibits discrimination against individuals based on national origin or citizenship status in hiring, recruitment, referrals, and discharge. There are additional penalties for violating these provisions. Information can be found in the Handbook for Employers by the U.S. Citizenship and Immigration Services: https://www.uscis.gov/i-9-central/handbook-employers-m-274.

This article is for informational purposes only and is not intended to provide legal advice. Any policy and compliance issues regarding the I-9 requirements should always be discussed with an employment law attorney.

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This monthly column offers HR basics, best practices, and compliance information. If you would like to see a particular subject addressed in a future column, please contact Lisa at bergersen@pewaukee.wi.us

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