

DATE: April 19, 2011

PERSL #1404

(Supersedes PERSLs dated
4/2/2008 and 3/23/2010)

TO: Human Resource and Labor Relations Directors/Designees

FROM: Judy Plante, Assistant Commissioner 

RE: Federal Employment Eligibility Verification

This policy memo clarifies the State's position on a number of issues regarding federal employment eligibility verification and Form I-9 completion. These policies apply to agencies in the executive branch as defined in M.S. 43A.02, subdivision 22, as well as classified positions in the Office of the Legislative Auditor, the Minnesota State Retirement System, the Public Employees Retirement Association and the Teacher's Retirement Association.

State agencies will not knowingly hire or continue to employ anyone who is not authorized to work in the United States. Each agency will:

- Comply with federal requirements for verification of identity and work authorization.
- Conduct verification consistent with requirements for the prevention of immigration-related employment discrimination.
- Complete I-9 forms and review required documents within specified timeframes.
- Monitor and reverify the eligibility of current employees with temporary work authorization.
- Terminate the state employment of new hires and current staff whose employment eligibility cannot be confirmed within specified timeframes.
- Audit agency records to ensure that they meet federal requirements for completion and retention of I-9 forms.

Hiring

All job offers will include a statement that employment is contingent on presenting required identity and work authorization documents. Do not allow anyone to begin work who - by the date of hire - fails to fully complete Section 1 of the I-9 or, for employment of less than three business days, fails to produce acceptable documents. Agencies are encouraged to require all new hires to present documents on the first day of employment. However, if Section 1 is completed and employment is not less than three days, employees may begin work but will be terminated if they fail to present acceptable documents within three business days of hire.

Photocopying: While federal regulations do not prohibit copying Form I-9 supporting documents, the practice must apply uniformly to every employee. Failure to consistently copy documentation and retain it attached to the I-9 may subject the employer to claims and penalties for unlawful discrimination. The employer may also be penalized if copies are used for any purpose other than verification. Because of the potential liability and the fact that copying does not relieve the employer of any requirements for fully completing the I-9, agencies will **not** photocopy documents presented by employees for I-9 documentation.

Note that, unrelated to the I-9, MMB may request copies of passports, visas and other immigration-related documents to verify exemptions from tax and FICA/Medicare withholding. Agencies may copy documents for MMB but, to distinguish this from the I-9 process, should inform employees that MMB has requested copies for purposes of determining tax status.

Hiring a Current Employee of Another Agency: Because agencies are not separate employers, no I-9 is needed if the person was hired by another agency prior to November 7, 1986, **and** continuously employed in state service since that date. If the most recent state service hire date is on or after November 7, 1986, obtain the I-9 form completed by the employee's current agency.

Rehiring a Former State Employee: The prior state employment may have been with the same or a different agency. If the separated employee's last I-9 was completed within the past three years and on the current version of the form (presently dated 8/7/09), agencies may choose to either prepare a new I-9 or update the existing one by completing Section 3. For instructions on completing Section 3 for rehires, see the Handbook for Employers at <http://www.mmb.state.mn.us/hr-i9>. A new I-9 is required if the rehire's most recent form is dated over three years ago or not the current version.

Retention: You must retain completed Forms I-9 for all employees for 3 years after the date of hire or 1 year after the date of termination, whichever is **later**.

Reverification for Employees with Work Authorization Expiring

Employers are required to reverify employment eligibility and update the I-9 forms of employees whose work authorization document has an expiration date. This must be completed no later than the date the current document expires. Agencies can track expiration dates by recording the relevant information in SEMA4 and using the on-demand Visa Permit Data report (PDHR6000).

Agencies must provide written notices to employees prior to the date the current work authorization expires. To allow employees time to renew their documents, this will be done six months in advance and again three months prior to the expiration date. Agencies may choose to provide additional reminders. Below is a sample notice for employees:

According to our records, your authorization to work in the United States will expire on [insert expiration date]. By that date, you must submit documentation of your continued authority to work. Your employment will be terminated if you do not present valid work authorization by the end of your workday on [insert expiration date or, if the agency is closed on that date, the immediately preceding business day]. Present your new work authorization document to [insert name and location of the person who will complete the I-9 reverification]. The current list of acceptable work authorization documents is attached. It is not necessary to resubmit a document establishing your identity.

The employee need not present the same work document that was provided initially; accept any valid document that is on the current USCIS list. Do not reverify an expired U.S. passport or passport card, an Alien Registration Receipt Card/Permanent Resident Card, or a List B document that has expired. Record, sign and date the reverification in Section 3 of the employee's original I-9. However, if that I-9 is an earlier version of the form, complete Section 3 on the latest version (currently 8/7/09). Staple the new form to the old form and retain both copies in your records.

Any employee who fails to present valid work authorization by the expiration date of the current document will be terminated. When the employee reports to work on the date the existing document expires (or the immediately preceding business day if the agency is closed on the expiration date), deliver the following notice:

The purpose of this letter is to inform you that, effective at the end of the work day, your employment with the State of Minnesota is ended. As indicated in our correspondence to you dated *[insert dates of prior written notices]*, documentation of your authority to work was required no later than the end of today to continue your employment. Federal law requires that reverification of authorization occur no later than the date that the current work authorization expires. To comply with federal law, we are required to end your employment effective at the end of your shift on *[insert date]* for failure to submit a current document.

For permanent (non-probationary, non-temporary) classified employees, also include the following:

You have the right to request a meeting to hear an explanation of the reasons resulting in this action and to present your side of the story. If you request a meeting, it will be held at *[insert time]* p.m. today. You are entitled to have a union representative at that meeting.

In the rare cases where receipts are permitted, the employee may continue to work during the receipt period but must produce acceptable work authorization by the end of that period. Anyone who fails to do so is terminated as described above but effective on the last day of the receipt period. For further information on receipts and receipt periods, see the *Handbook for Employers*.

Agency I-9 Audits and Correcting Errors

Agencies should regularly audit their practices and records to verify that all necessary I-9 forms are on file and properly completed and to identify any problems to be addressed with staff responsible for I-9 completion. Curable errors found during the audit must be corrected. Attached is a suggested outline for a basic agency audit. Depending on your agency's internal procedures, you may want to add further points for review. The following two pages contain information related to I-9 audits and correcting I-9 errors.

Please consult with your Labor Relations Representative if you are facing a situation that may result in an employee termination.

I-9 Audit

Agency Policies/Procedures

When conducting an audit, consider the following: Are there written procedures to follow for I-9 responsibilities? Do the procedures cover:

- For whom I-9 is/is not required (e.g., anyone hired to perform labor or services in return for wages or other remuneration such as food or lodging; not independent contractors).
- Deadlines for completion of Sections 1 and 2.
- Direction to provide a complete and current list of acceptable documents to hires and to employees being reverified; where to obtain the list.
- Requirement that hires complete Section 1 themselves or, if assistance is provided, the Preparer/Translator Certification block is completed.
- Descriptions and/or samples of acceptable and unacceptable documents.
- Immigration-related discrimination (e.g., do not request documents before a job offer is accepted or require further documents once provided with those sufficient to establish identity and work eligibility).
- Information for agency representatives that they sign I-9 forms under penalty of perjury.
- Recording and reverification of documents with expiration dates; obligation not to refuse a valid document or refuse to hire solely because employment authorization is temporary.
- Retention period for I-9 forms.

Is an audit system in place to ensure that the policies and procedures are being followed?

Is there a system to track expiration of employment eligibility and follow up with employees?

Are I-9 forms stored so the agency could produce them in three days for a compliance agency?

Is a system in place to track retention and purge I-9s of terminated employees at the proper time?

Agencies with Multiple Locations

Are all agency representatives acting on the agency's behalf trained in how to complete the I-9?

Are they provided with written procedures and descriptions/samples of acceptable documents?

Are all I-9 forms forwarded to central HR for review and storage? If not, is another system in place to verify that forms in other locations are completed timely/accurately and retained correctly?

Is there a process to ensure staff in all locations are notified of changes affecting I-9 completion?

Review of I-9 Forms

Were all forms completed electronically or in ink?

Were deadlines met - Section 1 by the date of hire, Section 2 within three business days (or date of hire for employment of less than three days), Section 3 by the document expiration date?

Were I-9 forms retained for the correct period of time? Have older forms been purged?

Does every current employee with a hire date later than November 6, 1986, have a completed I-9 form that contains all necessary information, signatures and dates? If not, use the information on the following page to correct the errors found.

Correcting I-9 Errors

Changes should include a reason (e.g., during a self-audit, the agency discovered....) and be initialed and dated. Use the date the correction is made; do not backdate.

- **No I-9 on file for a current employee:** Ensure that the employee and an employer representative complete a current version of the Form I-9, using the date this is accomplished. Indicate on the form why it was not prepared within required timeframes.
- **New employee did not check the “attest” box:** Have the employee complete this part and initial and date the change with the date accomplished.
- **New employee signature and/or date is missing:** Have the employee complete this part, using the date accomplished.
- **No employment begin date in Section 2:** Insert the most recent hire date for state service. Add your initials and the current date.
- **Either the identity or work authorization document is missing or documents are both from the same list:** Secure the other form of documentation from the employee and record it correctly on the I-9. Add your initials and the current date.
- **Document information is missing or invalid:** Secure the document from the employee and enter the correct information on the form. Add your initials and the current date.
- **Verification documents are not listed in the correct columns:** Indicate the proper placement with arrows. Add your initials and the current date.
- **Expired work authorization has not been reverified:** Secure a currently valid document from the employee. Complete Section 3 on the present version of the Form I-9, using the date this is accomplished. Indicate on the form why it was not done within required timeframes.
- **Date employee was rehired is missing in Section 3:** Insert the date of rehire. Add your initials and the current date.
- **Employer representative signature is missing in Section 2 and/or 3:** The best method for correcting this error is to request the documents from the employee again. Remember that you are signing under penalty of perjury that you personally viewed and verified the original documents. Add your initials and the current date.
- **Employer representative date is missing in Section 2 and/or 3:** Add the current date with your initials.