

## **KNOW YOUR GEOGRAPHY... AND THE I-9 FORM**

**QUESTION:** I am a supervisor and I occasionally help Human Resources conduct interviews of job applicants for employees who, if hired, will work in my department.

Yesterday, during an interview, I started asking an applicant questions about one of the answers on her application. In response to the question "Where were you born?" she had answered "El Paso." I asked her if she had grown up in Mexico, or had she moved to the U.S. when she was young?

Well, she stared at me like a deer in the headlights! After an awkward silence she said that she had only been to Mexico once, on a spring break vacation during college. When I told her why I'd asked about Mexico she said, "You do know that El Paso is in Texas, right?"

That's about the point when the HR Specialist jumped in and told the applicant that the question was supposed to be deleted from the current version of the application when it was last revised, and apologized for my having asked her about where she was born. Talk about embarrassing! I was annoyed by the HR guy's condescending comments, and when I asked him why an applicant's birthplace is such a big deal -- especially since we have to check employee's citizenship out on the I-9 form once they start working for us -- he just said that I shouldn't ask about an applicant's "citizenship status."

What gives? Is he right? What's the point of the I-9?

**ANSWER:** The HR representative is correct that an applicant's birthplace is not an appropriate inquiry, either on an application or during the interview. National origin discrimination is illegal, so even if an applicant (or employee) volunteers that they were born or have resided outside the U.S. you should not factor that information into a hiring decision (or decisions regarding any other terms or conditions of employment). As for the purpose and proper use of the I-9 forms, please see the answer to the question below.

**QUESTION:** We have a high volume and a somewhat high turnover of employees, so we have employee orientation for groups of employees once a month instead of individual orientations. During the orientation, we have the employees fill out an I-9 form. We make copies of the acceptable employment eligibility document(s) submitted by the employees and then file all of it in the employees' personnel files.

Just to ensure that we have current I-9 information for all employees, we have everyone fill out new I-9 forms and make current copies of the acceptable employment eligibility document(s) every January. Is there anything else we should be doing to make sure we are in compliance with the INS laws?

**ANSWER:** Actually, you should be doing more in some respects, and doing less in others. Here is a review of the I-9 requirements.

The Immigration Reform and Control Act (IRCA) prohibits employers from knowingly hiring illegal aliens and also prohibits discrimination on the basis of citizenship. The Act also makes it illegal to hire an individual for employment without complying with I-9 form employment verification procedures for employees hired after November 6, 1986. The I-9 form is entitled "Employment Eligibility Verification Form." The United States Citizenship and Immigration Services (USCIS) (formerly called the Immigration and Naturalization Service, or INS) enforces IRCA and routinely audits employers to ensure they are complying with I-9 form requirements.

The Act requires employers to review and verify specific document(s) that verify employees'

eligibility to be employed in the U.S. The documents must appear genuine and relate to the employee named. However, it is not the employer's duty to conduct investigations of the validity of the document produced by an employee. That's the USCIS's job.

The I-9 form must be completed within three days of hire. The employee is required to fill out the Employee Section on the date of hire, and the employer has until the third day of employment to complete the employer section. Ultimately, it is the responsibility of the employer to ensure that the I-9 Form is filled out.

Obviously your practice of having employees fill out I-9 forms at a once-a-month orientation only satisfies the three day requirement when the timing of hire and orientation coincidentally occurs within a three-day period. You need to change your procedure to require employees to fill out the form on the date of hire followed by your verification of documents and completing the employer section of the form within three days.

Employers may --but are not required to -- photocopy the employment eligibility document(s) provided by employees. If employers choose to do so, as you do, employers should document all new employees the same way, thus treating all employees equally.

Employers should keep I-9 forms for all employees (hired after November 6, 1986) separate from individual employees' personnel files. Storing all employees' I-9 Forms in a single location makes it easy to produce the forms in the event of an audit by the USCIS. The USCIS conducts routine audits to ensure employers are complying with I-9 Form requirements. As of 2004, the law also allows employers to electronically complete and store I-9s.

Employers are responsible for not "knowingly" hiring unauthorized aliens or maintaining them as workers after their employment authorization has expired. Therefore, employers must calendar work permit expiration dates and conduct follow-up checks.

As for your practice of updating all employee I-9 information annually, you need to discontinue this system immediately. Your obligation as an employer is to monitor and follow up on employment authorization dates; however, this is limited to doing so on an individual basis. The mass overhaul you are currently conducting is excessive, and could be construed as a surreptitious way to scrutinize employees who are nevertheless legal to work in the U.S. due to a work visa or other reason not based on citizenship.

Employers are required to keep I-9 forms for three years from the employee's date of hire, or alternatively, for one year after employment ends, whichever date is later.

More information on the I-9 form is available from the USCIS at 1-800-357-2099, and online at the USCIS web site <http://uscis.gov/graphics/formsfee/forms/i-9.htm>.

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