

U.S. Department of Justice Civil Rights Division



**Office of Special Counsel
For Immigration-Related
Unfair Employment Practices**

Overview

- OSC History
- Types of Discrimination
- Relationship to I-9 Process
- Hot topics: E-Verify/No-Match Issues
- OSC Enforcement
- Resources



Employer Hotline: 1-800-255-8155



Office of Special Counsel for Immigration-Related Unfair
Employment Practices: www.justice.gov/crt/about/osc

Historical Overview

Immigration Reform and Control Act of 1986 (IRCA)

- Initiated Employer Sanctions for Knowingly Hiring Undocumented Workers
- Established Form I-9 Employment Eligibility Verification Process
- **Created OSC to Enforce Anti-Discrimination Provision**

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Prohibited Conduct Under the INA's Anti-Discrimination Provision

(8 U.S.C. 1324b)

- Citizenship/Immigration status discrimination
- National origin discrimination
- Document abuse
- Retaliation or Intimidation

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Citizenship/Immigration Status Discrimination

- Treating individuals who are eligible to work differently because they are, or are not, U.S. citizens, or based on their immigration status
- With respect to Hiring, Firing, and Recruitment or Referral for a Fee
- Employers with more than 3 workers covered

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Citizenship Status Discrimination Examples

- ⦿ “U.S. citizens only” hiring policy
- ⦿ Refusing to hire a worker because the employer believed the worker is not a U.S. citizen
- ⦿ Preferring temporary work visa holders
- ⦿ Unequal application of “dishonesty” policies

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Is Preference in Hiring Based on Citizenship Status Ever Permissible?

- ⦿ Where the individual rejected is not work-authorized
- ⦿ Where required by law, regulation, executive order, or government contract
- ⦿ Where the individual rejected is not protected, such as an individual who requires sponsorship



National Origin Discrimination

- ⦿ Treating employees differently based on:
 - Country of origin/ancestry
 - Accent
 - Appearing to be from a certain country
- ⦿ With respect to Hiring, Firing, and Recruitment or Referral for a Fee
- ⦿ Employers with 4 to 14 workers covered*

**The EEOC has jurisdiction over employers with more than 14 employees.*

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National Origin Discrimination Examples

- Preferring people from a particular country
- Only hiring “native English speakers”
- Not hiring someone because s/he has a foreign accent



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Document Abuse

- ⦿ Employers may not, for the purpose of verifying a worker's employment eligibility:
 - Request more or different documents
 - Reject reasonably genuine-looking documents
 - Specify certain documentsbased on citizenship status or national origin
- ⦿ Employers with more than 3 workers covered



Document Abuse & Form I-9

- The Form I-9's purpose is to establish a worker's **identity and work authorization**
- All employees hired after November 6, 1986, and working in the United States must complete an I-9 Form
- The form has 3 sections

Employment Eligibility Verification
 USCIS Form I-9
 Department of Homeland Security
 U.S. Citizenship and Immigration Services
 OMB No. 1615-0047
 Expires 03/31/2016

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employee must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) First Name (Given Name) Middle Initial Other Names Used (if any)

Address (Street Number and Name) Apt. Number City or Town State Zip Code

Date of Birth (mm/dd/yyyy) U.S. Social Security Number E-mail Address Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.
 I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "NIA" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____
 OR
 2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:
 Foreign Passport Number: _____
 Country of Issuance: _____
 Some aliens may write "NIA" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: _____ Date (mm/dd/yyyy): _____

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee)
 I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: _____ Date (mm/dd/yyyy): _____
 Last Name (Family Name) First Name (Given Name)
 Address (Street Number and Name) City or Town State Zip Code

Form I-9 03/08/13 N Page 7 of 9

Employer Completes Next Page

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: _____ Date (mm/dd/yyyy): _____ Print Name of Employer or Authorized Representative: _____

Form I-9 03/08/13 N Page 8 of 9

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Form I-9: Section 1

Employee completes Section 1 after accepting a job offer and by the first day of work

 **Employment Eligibility Verification** USCIS
Department of Homeland Security Form I-9
U.S. Citizenship and Immigration Services OMB No. 1615-0047
Expires 03/31/2016

▶ **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)		Apt. Number	City or Town		State	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		E-mail Address		Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: _____ Date (mm/dd/yyyy): _____

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: _____ Date (mm/dd/yyyy): _____

Last Name (Family Name)		First Name (Given Name)		
Address (Street Number and Name)		City or Town	State	Zip Code

Form I-9 03/08/13 N Page 7 of 9

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Form I-9: Section 1 (cont.)

An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) . Some aliens may write "N/A" in this field.
(See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number:

OR

2. Form I-94 Admission Number:

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number:

Country of Issuance:

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

3-D Barcode
Do Not Write in This Space

- Some “aliens authorized to work,” such as refugees and asylees, are authorized to work indefinitely
- If no expiration date, the employee may write: “N/A”
- An employee is not required to show documents proving the selected status

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Form I-9: Section 2

Employer completes Section 2 within 3 business days of the first day of work. (If job begins Monday, Section 2 must be completed by Thursday)

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title: Issuing Authority: Document Number: Expiration Date (if any)(mm/dd/yyyy):		Document Title: Issuing Authority: Document Number: Expiration Date (if any)(mm/dd/yyyy):		Document Title: Issuing Authority: Document Number: Expiration Date (if any)(mm/dd/yyyy):
Document Title: Issuing Authority: Document Number: Expiration Date (if any)(mm/dd/yyyy):				
Document Title: Issuing Authority: Document Number: Expiration Date (if any)(mm/dd/yyyy):				

3-D Barcode
Do Not Write In This Space

- List A (Both Identity & Employment Eligibility) OR
- List B (Identity) + List C (Employment Eligibility)

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Form I-9: Section 2 (cont.)

Preventing Discrimination

- ⦿ An employer must allow the employee to present his or her choice of documentation to complete the I-9 Form
- ⦿ An employer may not ask for specific or more documents, or reject a valid document



Form I-9: Section 2 (cont.)

Documents with Expiration Dates

- There are exceptions to the general rule that documents must be unexpired:

Example - “Temporary Protected Status” or “TPS”: EAD with A-12 or C-19 category may be subject to an “automatic extension”

- Generally, documents without an expiration date are unexpired:

INS-issued Resident Alien card with no expiration date



Form I-9: Section 2 (cont.)

Acceptable Receipts

- ◎ Receipt for the replacement of a document that was lost, stolen or damaged (valid 90 days)
- ◎ Arrival portion of Form I-94/I-94A with a temporary I-551 stamp and the individual's photograph (valid for 1 year from issuance if no expiration date)
- ◎ Departure portion of Form I-94/I-94A with a refugee admission stamp (valid for 90 days)



Form I-9: Section 2 (cont.)

I-94 Arrival-Departure Records

U.S. Customs and Border Protection (CBP) is now automating I-94s. An employee may show:

Departure Number
813106636 11

Department of Homeland Security
CBP I-94A (11/04)
Departure Record

L1
12345

09/17/2007

Family Name
SAMPLE

First (Given) Name
AHMET

Country of Citizenship
PAKISTAN

20041122 US-VISIT 20050207 MULTIPLE

See Other Side STAPLE HERE

OR

U.S. Customs and Border Protection
Securing America's Borders

Get I-94 Number I-94 FAQ OMB No. 1651-0111 Expiration Date: 11/30/2014

Admission (I-94) Number Retrieval

Admission (I-94) Record Number: 69001333663 Print

Admit Until Date (MM/DD/YYYY): 08/24/2013

Details provided on Admission (I-94) form:

Family Name:	Testing
First (Given) Name:	Monday
Birth Date (MM/DD/YYYY):	05/06/1985
Passport Number:	123000456
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	03/13/2013
Class of Admission:	B1

I-94 Card

Print-Out from CBP's Website

If the pre-printed admission # on an I-94 card is crossed out with a different # handwritten below, use the handwritten # for Section 2.



Form I-9: Section 2 Common Problems

- ⦿ Requiring non-U.S. citizens to produce a List A document but allowing U.S. citizens to produce any document they choose
- ⦿ Requiring non-U.S. citizens to produce documents from Lists A, B, and C
- ⦿ Requiring certain U.S. citizens to produce a certificate of naturalization
- ⦿ Rejecting documents that are valid based on citizenship status or national origin
- ⦿ Failing to consult the current version of the Handbook for Employers or USCIS's I-9 Central website



Form I-9: Section 3 (Reverification and Rehires)

Section 3. Reverification and Rehires <i>(To be completed and signed by employer or authorized representative.)</i>			
A. New Name <i>(if applicable)</i> Last Name <i>(Family Name)</i> First Name <i>(Given Name)</i>		Middle Initial	B. Date of Rehire <i>(if applicable)</i> <i>(mm/dd/yyyy)</i> :
<input type="text"/>		<input type="text"/>	<input type="text"/>
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.			
Document Title:	Document Number:	Expiration Date <i>(if any)</i> <i>(mm/dd/yyyy)</i> :	
<input type="text"/>	<input type="text"/>	<input type="text"/>	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.			
Signature of Employer or Authorized Representative:	Date <i>(mm/dd/yyyy)</i> :	Print Name of Employer or Authorized Representative:	
<input type="text"/>	<input type="text"/>	<input type="text"/>	

- U.S. citizens, Permanent Resident Cards (green cards), and List B documents should not be reverified!
- Employer must accept a List A or List C document (e.g. unrestricted social security card)

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Who is Protected from Discrimination?

Protected:

- ⦿ All work-authorized individuals (but certain categories of noncitizens are not protected from citizenship status discrimination)

Not Protected:

- ⦿ Undocumented individuals



Retaliation or Intimidation

Protects all individuals who :

- file charges with OSC
- cooperate with an OSC investigation
- contest action that may constitute unfair documentary practice
- assert their own or others' rights under the INA's anti-discrimination provision

Protects from what?

- intimidation, threats, coercion, and retaliation



Retaliation/Intimidation Examples

- ⦿ A lawful permanent resident who explains he is not required to present his “green card” for the Form I-9 is terminated
- ⦿ A worker who complains that an employer is preferring undocumented workers has his hours reduced
- ⦿ A worker threatens to file a charge of citizenship status discrimination with OSC is demoted





Employment Eligibility Verification

- ◎ An electronic program that verifies an individual's permission to work in the U.S.
- ◎ Run by the Department of Homeland Security, in partnership with the Social Security Administration
- ◎ OSC investigates discriminatory use of E-Verify

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How E-Verify Works

- ⦿ An individual can only be run through E-Verify after hire and completion of the I-9 Form
- ⦿ Employers who use E-Verify must use it for all new hires and only in certain cases are permitted by MOU to use E-Verify on current employees
- ⦿ E-Verify compares the employee's I-9 Form information to information in SSA and DHS records



Proper Handling of a TNC

- ⦿ A “tentative non-confirmation” (TNC) issues when the Form I-9 information doesn’t match government databases
- ⦿ The employer must promptly tell an employee about a TNC
- ⦿ An employee who wants to “contest” the TNC must inform the employer and sign the TNC notice
- ⦿ The employer must give the employee a referral letter with instructions for resolving the TNC and the deadline for contacting DHS or SSA



Proper Handling of a TNC

- ⦿ While an employee is in the process of resolving a TNC, the employer **may not take any adverse action**, such as:
 - Termination or Suspension
 - Delaying a start date, training, etc.
 - Encouraging the employee to quit
 - Cutting work hours or withholding pay
 - Requesting additional documentation



E-Verify: Special Issues

- ⦿ An employer who believes a “final nonconfirmation” is in error should contact E-Verify: 1-888-464-4218
- ⦿ Employees who have not yet received a Social Security Number should be run through E-Verify once they receive their SSN
- ⦿ Federal Contractor Requirements – only employers required by federal contract and enrolled in E-Verify as a federal contractor may run existing employees through E-Verify

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E-Verify: Self Check

- ⦿ Service that allows an employee to check his or her information through E-Verify for free
- ⦿ Employers **cannot** require or ask applicants or employees to use Self Check or provide a Self Check print-out

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Avoiding Discrimination in E-Verify

- ⦿ Do not use E-Verify or Self-Check to pre-screen employees in any way
- ⦿ Follow the correct procedures for handling a TNC
- ⦿ Treat all employees the same regardless of citizenship status or national origin
- ⦿ Delay the use of E-Verify for employees who have not yet received a Social Security Number and run through E-Verify only after they receive their SSN

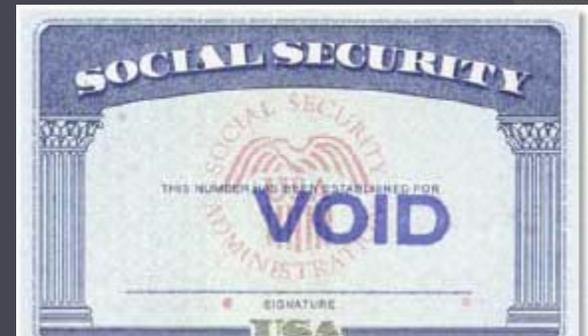
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Social Security Number No-Match

- ⦿ A notice that the employee name and Social Security Number (SSN) submitted by employer do not match agency records
- ⦿ **No-Match notices alone say nothing about immigration status or work authorization**



Responding to SSN No-Matches

- ⦿ Do NOT assume no-match notice is evidence of undocumented status or lack of work authorization
- ⦿ Follow same procedures for all employees, regardless of citizenship status or national origin
- ⦿ Give the employees a reasonable period of time to resolve any discrepancy in the employee's records
- ⦿ **No-match guidance is available on OSC's website**

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Social Security Number Verification Service: SSNVS

- SSNVS is not a substitute for E-Verify
- May be used only for wage reporting (W-2) purposes
- Illegal to use before hiring a worker
- Must apply consistently to all workers

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OSC Enforcement

◎ Charge-Based

- OSC investigates charges of discrimination filed by injured parties or their representatives

◎ OSC-Initiated

- OSC has authority to open an investigation based on reasonable belief that an employer has committed a violation



Possible Outcomes of Charge

- ⦿ The charge is dismissed if OSC finds no reasonable cause to believe the employer engaged in discrimination/no jurisdiction
- ⦿ If OSC determines there was discrimination, settlement attempts are made before a complaint is filed in court
- ⦿ If settlement fails, a complaint is filed and the matter is litigated before an Administrative Law Judge (ALJ)
- ⦿ Charging Party may file own complaint



Remedies

- Hire or rehire
- Back pay
- Injunctive Relief
 - Training
 - Monitoring
- Civil penalties



Civil Penalties

Assessed per Individual Discriminated Against

Citizenship Status Discrimination, National Origin Discrimination, and Retaliation:

- 1st Violation → \$375 - \$3,200
- 2nd Violation → \$3,200 - \$6,500
- Subsequent Violations → \$4,300 - \$16,000

Document Abuse Violations:

- \$110 - \$1,100



OSC Resources

- Call **OSC's Employer Hotline 1-800-255-8155** to speak with an OSC representative (calls can be anonymous)
- Sign up for a free webinar
- Educational materials are available on OSC's website: www.justice.gov/crt/about/osc
- Contact OSC for printed materials
- Employers can email us for technical assistance at osc crt@usdoj.gov

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