



Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

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Forms:

[Charge Form](#)

[Form I-9](#) **NEW**

[Form I-9\(Sp\)](#) **NEW** (Spanish Version)

See [USCIS](#) website for important information concerning both I-9 forms

[Handbook for Employers](#) **NEW**

(Instructions for completing Form I-9)

[USCIS Fact Sheet for Employers](#)

(A helpful resource for completing the Form I-9 in addition to the Employer Handbook)

Frequently Asked Questions

Q. What is the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC)?

A. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) in the Department's Civil Rights Division protects U.S. citizens and individuals from employment discrimination based upon citizenship or immigration status and national origin, unfair documentary practices when verifying the employment eligibility of employees, and retaliation. Individuals discriminated against may file charges with OSC and be awarded back pay and reinstatement, among other remedies.

In addition, OSC conducts an outreach and education program aimed at educating employers, potential victims of discrimination, and the general public about their rights and responsibilities under the INA's anti-discrimination and employer sanctions provisions. OSC, in partnership with the Equal Employment Opportunity Commission, has conducted workshops throughout the United States for employers to increase understanding of employer sanctions and the protections against discrimination. To leverage its outreach activity, OSC also awards grants to organizations for the purpose of conducting public education programs about the rights of employees and the responsibilities of employers under the INA's anti-discrimination provision. OSC's grantees are state and local fair employment practices agencies and community-based, faith-based, labor, business and immigrant service organizations. Grantees translate OSC materials, work

with local organizations to reach new populations, hold seminars and meetings, distribute OSC materials, develop educational packets, update current legal manuals to include changes in the immigration law, disseminate information through the world wide web, and refer charges of discrimination to OSC. OSC provides technical assistance, speakers, and outreach materials to the grantees.

In an effort to increase accessibility to its services and resources, OSC has signed and/or reinvigorated its memoranda of understanding with various state and local human rights agencies, where individuals can now obtain OSC information and file charges of immigration related employment discrimination.

For further information about the Office of Special Counsel, or to file a charge of discrimination:

Call:

1-800-255-7688 (worker hotline) or **1-800-237-2515** (TDD)

1-800-255-8155 (employer hotline) or **1-800-362-2735** (TDD)

1-202-616-5594 (direct office line) or **1-202-616-5525** (TDD)

or write:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for
Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

*Cited in Aramark Facility Services v. Service Employees International Union,
No. 06-56662 archived on June 18, 2008*

The Office of Special Counsel has multilingual staff and attorneys ready to assist workers, employers and the public.

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Q. What is the Immigration and Nationality Act (INA)?

A. The Immigration and Nationality Act (INA) is the federal law governing almost all immigration matters. It prohibits employers from knowingly hiring undocumented workers and requires employers to verify their employees' work eligibility as specified on the I-9 Form. In turn, employees must present documentation to their employers to establish both identity and employment eligibility. There are several combinations of legally acceptable documents from which they can choose. The I-9 Form must be completed for every employee, regardless of national origin, and whether or not a U.S. citizen. An employer's failure to verify the identity and employment eligibility of new employees by completing the I-9 Form violates federal immigration law. Congress established the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) to enforce the antidiscrimination provisions of the INA and to educate the public about immigration-related employment discrimination.

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Q. What type of discrimination is prohibited by the INA?

A. [The Immigration and Nationality Act \(INA\)](#) prohibits:

- Citizenship or immigration status discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with four or more employees, subject to certain exceptions. Employers may not treat individuals differently because they are, or are not, U.S. citizens or work authorized individuals. U. S. citizens, recent permanent residents, temporary residents, asylees, and refugees are protected from citizenship status discrimination. Exceptions: permanent residents who do not apply for naturalization within six months of eligibility are not protected from citizenship status discrimination. Citizenship status discrimination which is otherwise

required to comply with law, regulation, executive order, or government contract is permissible by law.

- National origin discrimination with respect to hiring, firing, and recruitment or referral for a fee, by employers with more than three and fewer than 15 employees. Employers may not treat individuals differently because of their place of birth, country of origin, ancestry, native language, accent or because they are perceived as looking or sounding "foreign." U.S. citizens and all work authorized individuals are protected from national origin discrimination. The Equal Employment Opportunity Commission has national origin jurisdiction over employers with 15 or more employees.
- Unfair documentary practices related to verifying the employment eligibility of employees. Employers may not, on the basis of citizenship status or national origin, request more or different documents than are required to verify employment eligibility and identity, reject reasonably genuine-looking documents or specify certain documents over others. U.S. citizens and all work authorized immigrants are protected from document abuse.
- Retaliation. Individuals who file charges with OSC, who cooperate with an OSC investigation, who contest action that may constitute unfair documentary practices or discrimination based upon citizenship status or national origin, or who otherwise assert their rights under the INA's anti-discrimination provision are protected from retaliation.

Q. How can employers verify their employees' employment eligibility in a non-discriminatory manner?

A. Employers can demonstrate compliance with the law by following the verification (I-9 Form) requirements and treating all new employees the same. This includes the following steps:

- Hire only individuals who are authorized to work. Note that a "U.S. citizens-only" hiring policy is discriminatory except under limited circumstances. An employer may require U.S. citizenship for a particular job only if required to do so by federal, state, or local law or regulation, or by government contract.
- Complete the I-9 Form for all new hires. This form gives employers a way to establish that the individuals they hire are authorized to work in the United States. Employers must permit employees to present any document or combination of documents acceptable by law. Employers cannot prefer one document over others for purposes of completing the I-9 Form, and cannot require non-citizens to show particular documents issued by the Department of Homeland Security (or the former Immigration and Naturalization Service (INS)). Authorized aliens do not all carry the same documents. For example, not all aliens who are authorized to work are issued "green cards." As long as the documents are allowed by law and appear to be genuine on their face and to relate to the person, they should be accepted. Not to do so may constitute unlawful discrimination. For the list of documents that establish identity and work eligibility, please see the [List of Acceptable Documents](#).

Q. How can I contact the Office of Special Counsel?

A. You may write, call, or email the Office of Special Counsel (OSC). For immediate assistance, we recommend that you call one of the numbers listed below.

Send charges and written inquiries to:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for
Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

or Call:

1-800-255-7688 (worker hotline) or 1-800-237-2515 (TDD)
1-800-255-8155 (employer hotline) or 1-800-362-2735 (TDD)
1-202-616-5594 (direct office line) or 1-202-616-5525 (TDD)

For questions about Title VII, please call the Equal Employment Opportunity Commission at 1-800-669-4000 (toll free) or 202-275-7518 (TDD), or visit its website at <http://www.eeoc.gov>.

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Q. What documents may employees show employers to establish identity and employment eligibility?

A. The documents identified below are acceptable to establish identity and employment eligibility. Please note that the list of acceptable documents is different than the list that appears on the back of the current I-9 Form due to intervening changes in law. However, employers that continue to follow the list that appears on the back of the I-9 Form will not be sanctioned by the Department of Homeland Security (DHS), until such time as DHS issues a new I-9 Form and Handbook for Employers. In addition, please call OSC for special rules that apply in certain situations, including receipts, rehiring former employees, workers with temporary protected status (TPS), documentation for individuals with disabilities, and additional acceptable documents.

List A

Documents that Establish Both Identity and Employment Eligibility.

- U.S. Passport (unexpired or expired)
- Unexpired foreign passport that contains a temporary I-551 stamp
- Alien Registration Receipt Card or Permanent Resident Card (INS Form I-551)
- Unexpired Employment Authorization Card that contains a photograph (Form I-766, Form I-688, Form I-688A, Form I-688B)
- For non-immigrants authorized to work for a specific employer: an unexpired foreign passport with an Arrival-Departure Record, Form I-94, bearing an unexpired endorsement of the individual's nonimmigrant status.
- Unexpired foreign passport with a Readable Immigrant Visa (MRIV) and unexpired temporary I-551 stamp (valid until the expiration date set forth on the temporary I-551 stamp).
- Unexpired foreign passport with a MRIV containing temporary I-551 language and endorsed with an unexpired DHS admission stamp (valid for one year from the date of admission).

See also the receipt rule discussion below for additional documentation.

OR

List B

Documents that Establish Identity

- Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
- ID card issued by federal, state or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address

- School ID card with a photograph
- Voter's registration card
- U.S. Military card or draft record
- Military dependent's ID card
- U.S. Coast Guard Merchant Mariner Card
- Native American tribal document
- Driver's license issued by a Canadian government authority

For persons under age 18 who are unable to present a document listed above:

- School record or report card
- Clinic, doctor, or hospital record
- Day-care or nursery school record.

AND

Documents that Establish Employment Eligibility

- U.S. Social Security card issued by the Social Security Administration (other than a card stating it is not valid for employment or valid only with INS work authorization)
- Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350)
- Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
- Native American tribal document
- U.S. Citizen ID Card (Form I-197)
- ID Card for use of Resident Citizen in the United States (Form I-179)
- Unexpired employment authorization document issued by the Department of Homeland Security (other than those listed under List A), including (1) a Form I-94 identifying the holder as an asylee (by stating "asylum", "asylee" or appropriate provision of law), **or** (2) other documentation issued by DHS (or the former Immigration and Naturalization Service (INS)) that identifies the holder as an asylee, lawful permanent resident, refugee (except for the Form I-94 identifying the holder as a refugee, which is considered a receipt only), or other status authorized to work in the United States incident to status.

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Q. What is the receipt rule?

A. Under the receipt rule, an individual may present a "receipt" in lieu of a listed document to complete section 2 of the I-9 Form. The receipt is valid for a temporary period. There are three different documents that qualify as receipts under the rule.

The first type of receipt that an employee may present is a receipt for the application for a replacement document when the document has been lost, stolen, or damaged. The receipt is valid for 90 days, after which

the individual must present the replacement document to complete the I-9 Form. Note that this rule does not apply to individuals who present receipts for new documents following the expiration of their previously held document.

The second type of receipt that an employee may present is a Form I-94 containing a temporary I-551 stamp and a photograph of the individual, which is considered a receipt for Form I-551. The individual must present the Form I-551 by the expiration date of the temporary I-551 stamp, or within one year from the date of issuance of the Form I-94 if the I-551 stamp does not contain an expiration date.

The third type of receipt that an employee may present is a Form I-94 containing an unexpired refugee admission stamp. This is considered a receipt for either an Employment Authorization Document (i.e. Form I-766 or I-688B) or a combination of a Social Security card and List B document. The employee must present acceptable documentation to complete the I-9 Form within 90 days after the date of hire, or in the case of reverification, the date employment authorization expires.

Note: DHS regulations provide that if it does not adjudicate an application for employment authorization within 90 days, it will grant an employment authorization document valid for a period not to exceed 240 days. To receive an interim employment authorization document, the individual should contact his or her local office of United States Citizenship and Immigration Services (USCIS).

Q. How can employers get up-to-date and accurate information?

A. OSC has a toll-free automated telephone hotline for employers: 1-800-255-8155 (1-800-362-2735 (TDD)). Information is available 24 hours a day and features easy-to-follow prompts to receive prerecorded answers to common questions asked by employers.

The hotline offers callers taped information on four key subjects:

- Tips on avoiding immigration-related discrimination when completing the I-9 Form;
- Information on how to avoid immigration-related discrimination in hiring practices;
- The penalties for employment discrimination; and
- The acceptable documents that establish identity and work eligibility.

Callers who need additional information will be able to speak with an OSC representative from 9 a.m. to 5 p.m., Eastern Standard Time/Eastern Daylight Time. The hotline's Fax-Back option provides callers with helpful written information. Callers can key in their fax machine number, and within minutes will receive by fax a copy of the list of documents acceptable for establishing identity and work eligibility and information on the INA's anti-discrimination provisions. OSC updates the telephone system's recorded and Fax-Back information to reflect changes to the list of acceptable documents.

For more information, please contact:

U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for
Immigration-Related Unfair Employment Practices
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

General Information: 1-800-255-7688

1-800-237-2515 (TDD for hearing impaired)

Automated Employer Hotline: 1-800-255-8155

1-800-362-2735 (TDD for hearing impaired)

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Q. What questions are frequently asked on OSC's employer hotline?

1. Do I need to reverify lawful permanent residents who produce a "green card" with a future expiration date?

No. Lawful permanent residents who produce an unexpired Permanent Resident Card (Form I-551 or "green card") should not be reverified, even if the Form I-551 lists a future expiration date.

2. If an employee records an A Number on the I-9 Form, do I need to see a document with that number?

No. If an employee records an Alien Number or Admission Number in Section 1 of the I-9 Form, an employer should not ask to see a document with that number or otherwise specify what documentation an employee may present. During both initial verification and reverification, an employee may choose what documentation to present from the I-9 Form lists of acceptable documents.

3. My employee's DHS issued employment authorization document expired and the employee now wants to show me a Social Security card. Do I need to see a current DHS document?

No. During both initial verification and reverification, an employee may choose what documentation to present from the I-9 Form lists of acceptable documents. If an employee presents an unrestricted Social Security card upon reverification, the employee does not also need to present a current DHS document. However, if an employee presents a "restricted" Social Security card upon reverification, the employer must reject the restricted Social Security card since it is not an acceptable I-9 document and ask the employee to choose different documentation from List A or List C of the I-9 Form. A restricted Social Security card may state "not valid for employment" or "valid for work only with INS authorization."

4. Can you "run" this number (typically an A Number or Social Security Number) and tell me whether it's good?

No. The Office of Special Counsel does not perform that function.

Further, DHS can not "run" a number, unless the employer has "strong and articulable" reasons to believe documentation may not be valid, or unless an employer is participating in E-Verify. The Social Security Administration and the DHS operate E-Verify which provides employers a way to confirm the employment eligibility of their newly hired employees. For more information about this program, you may call the DHS at 1-888-464-4218 or visit <https://www.vis-dhs.com/employerregistration/>

5. My employee presented me with a receipt. Can I accept it?

It depends. A receipt must be accepted if it is for an application for a replacement document when the original document was lost, stolen, or damaged (in this case, the actual document must be presented to complete the I-9 Form within 90 days).

The arrival portion of a Form I-94 containing an unexpired temporary I-551 stamp and a photograph of the bearer must be accepted as a receipt for Form I-551. The employee must then submit the Form I-551 by the expiration date listed on the temporary I-551 stamp or within one year from the date of issuance of the Form I-94 when the I-551 stamp does not list an expiration date.

The departure portion of a Form I-94 containing a refugee admission stamp is a receipt for an employment authorization document (or a Social Security card) and List B document. Original documents must be presented to complete the I-9 Form within 90 days after the date of hire, or in the case of reverification, the date employment authorization expires.

6. May I accept a DHS Form I-94 indicating someone has been granted asylum as a list C document?

Yes. An I-94 Form indicating the person has been granted asylum may be accepted as a list C document. The I-94 does not need to be attached to a passport. An I-94 indicating the person has been admitted as a refugee may be accepted as a receipt (see question 5). Both refugees and asylees are work-authorized incident to their status and are protected individuals.

7. May I ask to see a Social Security card for payroll (and not I-9) purposes?

Yes. However, we recommend that you keep such requests separate from the I-9 process.

8. What is a "no match" letter?

In a "no match" letter, SSA informs you that the name and SSN you reported for an employee do not match SSA's records. The letter explains the reasons for keeping accurate records and lists the SSNs that do not match SSA's records. It also cautions you not to take any adverse employment action based on the letter against employees whose names and SSNs do not match with information in SSA's records. A no match does not mean that an individual is undocumented.

9. If an employee's name and SSN don't match SSA's records, doesn't that mean the employee is not authorized to work?

No. Just because there is a mismatch between your records and SSA's records, you should not assume that the employee lacks work authorization. There are many reasons for a mismatch to occur, including:

1. A name change (e.g., due to marriage, divorce or other reasons) after the SSN was issued;
2. A typing or printing error; and
3. An error based on cultural differences in how surnames are used.

You should not use the mismatch letter by itself as the reason for taking any adverse employment action against any employee. Doing so may put you in violation of the antidiscrimination provision of the immigration laws, the equal employment opportunity laws, or the labor laws. The General Counsel's office of the former INS, and OSC, have opinion letters that may assist you on this issue. Please call OSC for more information.

10. An employee has presented me with a document that looks "fake". Can I refuse to accept it?

You may refuse to accept a document only if it does not reasonably appear to be genuine or to relate to the person. Employers are not expected to be document experts and should not refuse to accept documents based on superficial irregularities. However, if the document does not reasonably appear to be genuine or to relate to the individual, the employer may ask the employee for additional documentation and should not employ the person if he or she is unable to comply.

11. My company is participating in E-Verify. May we terminate or suspend an employee if we receive a tentative nonconfirmation of the employee's information?

No. A tentative nonconfirmation does not mean the employee is not authorized to work. The employee must be allowed eight work days to contact SSA or DHS to resolve the situation. If the employee does so, an employer may not terminate the employee based on the tentative nonconfirmation of status and must await a final resolution from E-Verify, even if such final resolution takes longer than eight work days.

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Q. What are the 10 steps to take to avoid immigration related employment discrimination?

A.

1. Treat all people the same when announcing a job, taking applications, interviewing, offering a job, verifying eligibility to work, and in hiring and firing.
2. Accept documentation presented by an employee if it establishes identity and employment eligibility; is included in the list of acceptable documents; and reasonably appears to be genuine and to relate to the person.
3. Accept documents that appear to be genuine. You are not expected to be a document expert, and establishing the authenticity of a document is not your responsibility.
4. Avoid "citizen-only" or "permanent resident-only" hiring policies unless required by law, regulation or government contract. In most cases, it is illegal to require job applicants to be U.S. citizens or have a particular immigration status.
5. Give out the same job information over the telephone to all callers, and use the same application form for all applicants.
6. Base all decisions about firing on job performance and/or behavior, not on the appearance, accent, name, or citizenship status of your employees.
7. Complete the I-9 Form and keep it on file for at least 3 years from the date of employment or for 1 year after the employee leaves the job, whichever is later. This means that you must keep I-9s on file for all current employees. You must also make the forms available to government inspectors upon request.
8. On the I-9 Form, verify that you have seen documents establishing identity and work authorization for all employees hired after November 6, 1986, including U.S. citizens.
9. Remember that many work authorization documents (I-9 Form lists A and C) must be renewed. On the expiration date, you must reverify employment authorization and record the new evidence of continued work authorization on the I-9 Form. You must accept any valid document your employee chooses to present, whether or not it is the same document provided initially. Individuals may present an unrestricted Social Security card to establish continuing employment eligibility.

Note:

- Permanent resident cards should not be reverified
- Identity documents should not be reverified

10. Be aware that U.S. citizenship, or nationality, belongs not only to persons born in the United States but also to all individuals born to a U.S. citizen, and those born in Puerto Rico, Guam, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, and Swains Island. Citizenship is granted to legal immigrants after they complete the naturalization process.

For more information, call the OSC Employer Hotline at **1-800-255-8155** or OSC Worker Hotline: **1-800-255-7688**