

<p><b>HR/LR Policy #1404</b></p> <p>Employment Authorization Verification and Form I-9</p>	<p><b>Issued</b> 04/19/2011</p> <p><b>Revised</b> 6/18/2015 12/01/2014</p> <p>Supersedes PERSLs dated 04/02/2008 and 03/23/2010</p> <p><b>Authority</b> Enterprise Human Resources</p>
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OVERVIEW	
<b>Objective</b>	To set forth the state's position regarding federal employment eligibility verification and Form I-9 completion.
<b>Policy Statement</b>	<p>State agencies will not knowingly hire or continue to employ anyone who is not authorized to work in the United States. Each agency will:</p> <ul style="list-style-type: none"> <li>• Comply with federal requirements for verification of identity and work authorization.</li> <li>• Conduct verification consistent with requirements for the prevention of immigration-related employment discrimination.</li> <li>• Complete I-9 forms and review required documents within specified timeframes.</li> <li>• Monitor and re-verify the eligibility of current employees with temporary work authorization.</li> <li>• Terminate the state employment of new hires and current staff whose employment eligibility cannot be confirmed within specified timeframes.</li> <li>• Audit agency records to ensure that they meet federal requirements for completion and retention of I-9 forms.</li> </ul>
<b>Scope</b>	This policy applies to employees of executive branch agencies and classified employees in the Office of the Legislative Auditor, the Minnesota State Retirement System, the Public Employees Retirement Association, and the Teacher's Retirement Association.
<b>Definitions</b>	<p><b>Employee:</b> Defined by federal regulations to mean an individual who provides services or labor for wages or other remuneration, but does not include independent contractors. 8 C.F.R. § 274a.1.</p> <p><b>Employer:</b> A person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term employer shall mean the independent contractor or contractor and not the person or entity using the contract labor. 8 C.F.R. § 274a.1.</p> <p><b>Employment:</b> Any service or labor performed by an employee for an employer within the United States. 8 C.F.R. § 274a.1.</p>

## OVERVIEW

	<b>Hire:</b> The actual commencement of employment of an employee for wages or other remuneration. 8 C.F.R. § 274a.1.
<b>Exclusions</b>	N/A
<b>Statutory References</b>	8 U.S.C. 1324b, et seq. Unfair Immigration-Related Employment Practices 8 C.F.R. 274a.1, et seq. Employer Requirements

## GENERAL STANDARDS AND EXPECTATIONS

### I. HIRING

#### a. Completion of Form I-9

All written communication confirming job offers will include a statement that employment is contingent on presenting required identity and work authorization documents. Employees must complete Section 1 of Form I-9 no later than the first day of work for pay. Agencies are encouraged to require all new hires to present documents on the first day of work, but law requires employees to present acceptable documents within three business days of the first day of work for pay.

An employer must physically examine the documents establishing identity and employment authorization. After determining that the documents are original, genuine, and apply to the individual, the employer must complete Section 2 of Form I-9. For a list of acceptable documents, please visit the USCIS website: <http://www.uscis.gov/i-9-central/acceptable-documents>.

Employees will be terminated if they fail to present acceptable documents within three business days of their first day of work for pay.

In certain circumstances, employers can accept a receipt in lieu of employment eligibility documents. When 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, effective on the last day of the receipt period. For further information on receipts and receipt periods, see the *USCIS Handbook for Employers*: <http://www.uscis.gov/sites/default/files/files/form/m-274.pdf>.

#### b. Photocopying

It is recommended that agencies do not photocopy documentation presented by employees to establish employment eligibility. While federal regulations permit copying Form I-9 supporting documents, failure to consistently copy and retain such documentation may subject the employer to claims and penalties for unlawful discrimination. In addition, the employer may 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, MMB recommends that agencies do not photocopy documents presented by employees for I-9 documentation.

Note that, unrelated to Form 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. To distinguish this from the I-9 process, agencies should provide the employees a Tennessee notice informing the employees that MMB has requested copies for purposes of determining tax status. These documents should not be stored with the I-9.

#### c. Hiring a Current Employee of Another Agency

## GENERAL STANDARDS AND EXPECTATIONS

A new Form I-9 must be completed for a currently employed individual who is transferring from another state agency. The hiring agency should not request the initial Form I-9 from the state agency previously employing the individual.

### **d. Hiring a Former State Employee**

When hiring an individual who was previously employed by and separated from the State of Minnesota, a new Form I-9 should be completed. If the individual was previously employed by and separated from the same agency which is now hiring them, the agency does not need to complete a new Form I-9 if:

- The agency previously completed the Form I-9 and complied with verification requirements;
- Upon inspection of the Form I-9, the employer determines that the Form relates to the individual and that the individual is still eligible to work; and,
- The individual is hired within three years of the date of the initial execution of the Form I-9 and the employer updates the Form to reflect the rehire.

When hiring an individual who was previously employed by and separated from the same agency that now is hiring them, if upon inspection of the previous Form I-9 as required above, the employer determines that the individual's employment authorization has expired, the employer must re-verify the individual's employment eligibility.

### **e. Retention of Form I-9**

Completed Forms I-9 must be retained for all employees for 3 years after the date of hire, according to the agency's records retention schedule, or for 1 year after the date of termination, whichever is later.

## **II. RE-VERIFICATION FOR EMPLOYEES WITH WORK AUTHORIZATION EXPIRING**

If an employee has a work authorization document with an expiration date, employers are required to re-verify employment eligibility and update the I-9 forms as necessary. 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, written notice that current documentation is expiring must be provided to the employee six months prior to the expiration date and again three months prior to the expiration date. Agencies may choose to provide additional reminders. A sample notice for employees is listed below, under Forms and Instructions.

In order to re-verify employment eligibility, the employee must present a document that either shows continuing employment eligibility or is a new grant of work authorization. In certain circumstances, employers can accept a receipt in lieu of employment eligibility documents. The document presented by the employee must be reviewed. If it is genuine and related to the individual, it must be re-verified by noting the document's identification number and expiration date, if any, in Section 3 of the Form I-9 and signed by the agency's authorized representative.

Any employee who fails to present valid work authorization by the expiration date of the current document will be terminated. A sample notice is listed below, under Forms and Instructions, to present to employees reporting to work on the date the existing document expires (or the immediately preceding business day if the agency is closed on the expiration date).

## **III. NON-DISCRIMINATORY PRACTICES**

## GENERAL STANDARDS AND EXPECTATIONS

Agencies must not set different employment eligibility verification standards or require that different documents be presented by employees because of their national origin and/or citizenship status. Each employee must be allowed to choose the documents that he or she will present from the list of acceptable I-9 documents.

When re-verifying employment eligibility for an employee whose work authorization is expiring, do not request that an employee present a new, unexpired Employment Authorization Document (Form I-766) if he or she presented one during the initial verification. For re-verification, each employee must be free to choose to present any document from the list of acceptable I-9 documents.

Agencies cannot request to see employment eligibility verification before hire and completion of the I-9 form. Agencies must not refuse to accept a document, or refuse to hire someone, because an employment verification document has a future expiration date.

Agencies must not limit jobs to U.S. citizens unless U.S. citizenship is required for the specific position by law, regulation, executive order, or government contract. On an individual basis, agencies may legally prefer a U.S. citizen or noncitizen national over an equally qualified alien to fill a specific position, but agencies must not adopt a blanket policy of always preferring citizens over noncitizens.

### IV. 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.

## RESPONSIBILITIES

**Agencies are responsible for:**

Agencies must comply with the employment eligibility requirements. 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.

**MMB is responsible for:**

MMB will ensure that agencies have the necessary information and training to conduct personnel transactions in compliance with federal employment eligibility verification provisions and Form I-9 instructions. MMB will update this policy as necessary.

## FORMS AND INSTRUCTIONS

### I. SAMPLE NOTICE OF EXPIRING WORK AUTHORIZATION

Provide the following notice to employees with expiring work authorization, as explained above. Include a current list of acceptable work authorization documents with the notice.

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 authorization to work in the United States. Your employment will be terminated if you do not present valid work authorization by the end of the 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 re-verification*]. The current list of acceptable work authorization documents is attached. It is not necessary to resubmit a document establishing your identity.

### II. SAMPLE NOTICE OF TERMINATION FOLLOWING EXPIRATION OF WORK AUTHORIZATION

If an employee fails to provide updated work authorization by the expiration date of his or her current documentation, he or she will be terminated. Provide the following notice on the date that the document expires.

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 authorization to work was required no later than the end of today to continue your employment. Federal law requires that re-verification of work 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]* today. You are entitled to have a union representative at that meeting.

<b>Contacts</b>	Enterprise Human Resources Labor Relations Representative
<b>References</b>	<ul style="list-style-type: none"><li>• USCIS I-9, Employment Eligibility Verification Forms: <a href="http://www.uscis.gov/i-9">http://www.uscis.gov/i-9</a></li><li>• USCIS Handbook for Employers: <a href="http://www.uscis.gov/sites/default/files/files/form/m-274.pdf">http://www.uscis.gov/sites/default/files/files/form/m-274.pdf</a></li><li>• USCIS I-9 Central: <a href="http://www.uscis.gov/i-9-central">http://www.uscis.gov/i-9-central</a></li><li>• USCIS list of acceptable documents: <a href="http://www.uscis.gov/i-9-central/acceptable-documents">http://www.uscis.gov/i-9-central/acceptable-documents</a></li><li>• HR/LR Procedure #1404P, Employment Eligibility Verification: I-9 Audits</li></ul>