

Reverification of Employment Eligibility

FREQUENTLY ASKED QUESTIONS

February 2010

Q: What is “reverification”?

A: All employers in the United States must verify that their employees are authorized to be employed in the U.S., and usually they must do this within the first three days of hire. Workers present documents to prove their identity and that they are authorized to work. Reverification occurs when an employer asks workers to present their documents an additional time to prove that they are authorized to work. Usually an employer does this because the document an employee presented showed that the worker had temporary authorization to work and that authorization has expired or is about to expire. For example, reverification may occur when a worker’s employment authorization document has expired.

Q: When should my employer verify or reverify my employment eligibility and look at my documents?

A: Your employer should ask to see your documents at the time you are hired. The law requires that when you are hired, you must show your new employer one or more documents that establish your identity (who you are) and your eligibility to work in the United States. The employer reviews the documents when you and the employer complete an I-9 Employment Eligibility Verification Form.

On the back of the official I-9 form are three “Lists of Acceptable Documents”: List A, List B, and List C. You may choose to present one document from List A to establish both your identity and employment eligibility. Alternatively, you can show one document from List B (to establish identity) and one from List C (to establish employment eligibility). The employer must let you decide which documents to present. It is *your* choice, not the employer’s.

If you present employment eligibility documents that have expiration dates, the employer will write those dates on the I-9 form. On or near those dates, the employer may ask you again to present documents that show you are still eligible to work. This is called “reverification.” If your employment authorization document is temporary, you should apply to renew the document at least 120 days before it expires, to ensure that your new document will arrive by the time your prior document expires.

An employer that is audited by U.S. Immigration and Customs Enforcement (ICE) and told by ICE that its I-9 forms contain mistakes or other problems may also be required to reverify some or all of its employees’ employment eligibility.

However, if your employer chooses to reverify only a select group of employees rather than all employees, the employer may be violating the antidiscrimination provisions of federal law (the Immigration and Nationality Act) by discriminating against you. If you believe you have been discriminated against based on your national origin or based on your citizenship or immigration status, you can do something about it. See the the last Q&A (on page 3) for ways to deal with discrimination by your employer.

Q: Once I have shown my employer acceptable documents from List A or Lists B and C of the I-9 form, is the employer allowed to ask me to show more documents or ones that are different from those I chose?

A: When the worker and the employer fill out the I-9 form, the *worker always* must be allowed to choose which documents to present. As long as the documents the worker presents are on the I-9



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form’s “Lists of Acceptable Documents” and reasonably appear to be genuine and to relate to the worker, the employer must accept them. If an employer refuses to accept any document that is on the lists that appears to be genuine and to relate to the worker — or asks to see more documents or different ones than the I-9 form requires — the employer may be violating the antidiscrimination provisions of federal law. This form of discrimination is sometimes called “document abuse.”

But an employer is required to reject any document that does not reasonably appear to be genuine or that does not relate to the person presenting it. In other words, the employer may reject a document that looks fake.

In addition, if your employer uses E-Verify, and you present a List B document, your employer can accept only a List B document that contains a photo.

Q: Does E-Verify count as a reverification?

A: E-Verify is a voluntary electronic employment eligibility verification system that employers may use to verify the eligibility of newly hired workers within three days of their initial hire. Using E-Verify with new workers does not count as reverification because it takes place at the same time as the I-9 process described above.

Note that at this time, unless your employer is a federal contractor that has an E-Verify clause in its contract with the federal government, your employer may use E-Verify only to verify your employment eligibility within three days of your initial hiring. In addition, your employer may not use E-Verify to check your work authorization if you were working for the employer before the employer signed up to use the E-Verify program.

If you think your employer is using E-Verify to discriminate against you because of your national origin or your citizenship or immigration status, you can do something about it. See the last Q&A (on page 3) for ways to deal with discrimination by your employer.

Q: Under what circumstances is it not okay for my employer to reverify my eligibility to work?

A: There are a few circumstances when an employer may not reverify your employment eligibility,

unless the employer is requiring all workers to complete a new I-9 form. Employers should not reverify your eligibility to work if you are a lawful permanent resident and presented your “green card” when you first filled out the I-9 form (even though your green card has an expiration date), because your status as a lawful permanent resident does not expire. You should not be reverified if you presented a U.S. passport, either. Asylees and refugees are also authorized to work indefinitely. If they present documents that do not contain expiration dates, such as an unrestricted Social Security card, they should not be subject to reverification.

Nor should your employer reverify your employment eligibility after any of these things happen:

1. You take an approved leave from work, or a leave allowed under state or federal law, the employer’s policy, or a union contract.
2. You are demoted or promoted.
3. You are laid off temporarily because of lack of work.
4. You go on strike or are involved in some other way in a labor dispute.
5. You are reinstated in your job by a court, arbitrator, or other body after disciplinary action.
6. You are engaged in seasonal employment.
7. You transfer from one unit to another with the same employer.
8. You continue in your job after your employer sells or transfers the business to another employer, so long as the new employer maintains your original employer’s records and I-9 forms.

Workers to whom any of these things happen are considered to be under “continuing employment.” Employers should not reverify the employment eligibility of such workers. Employers also should not reverify identity documents, such as driver’s licenses (which are listed as “List B” documents on the I-9 form), when they expire.

Q: I have temporary protected status (TPS), but my employment authorization card is expired. I have been told that the

government automatically extended the work authorization of people in my situation. But my employer refuses to believe me. What should I do?

A: FIRST, you should get a copy of the Federal Register notice that says that the work authorization of people from your country who have TPS has been automatically extended. Copies of such notices can be downloaded from the part of U.S. Citizenship and Immigration Services' (CIS's) website, www.uscis.gov, that provides information about TPS by searching the CIS website for "Temporary Protected Status."

SECOND, take your employment authorization card and the Federal Register notice to your employer and explain again that, based on what the notice says, you are still eligible to work. In NILC's "TPS Toolkit," which is available at www.nilc.org/immsemplymnt/ircaempverif/index.htm#tps1, there is a sample letter that you can use to explain the extension and the Federal Register notice.

THIRD, if your employer still will not accept the employment authorization card, contact your union representative or a workers' rights advocate, or contact the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at 1-800-255-7688 or 1-800-237-2515 (TDD). More information about the OSC and how it can help you is available on its website, www.usdoj.gov/crt/osc.

FINALLY, be aware that if you do not reregister for TPS within the time allowed in the Federal Register notice, you will lose TPS. You need to reregister for TPS even if your work authorization has been automatically extended. So make sure that you reregister for TPS before the deadline. More information about who is eligible for TPS, deadlines for reregistering, and the employment eligibility of people with TPS is available from a page on the website of U.S. Citizenship and Immigration Services, www.uscis.gov.

Q: What can I do if I believe my employer has discriminated against me?

A: If you believe your employer has required you to go through reverification because the employer wanted to discriminate against you based on your national origin or based on your citizenship or immigration status, you can do something about it. If you belong to a union, you can talk to your union representative or steward and ask for advice and help. Or you can contact an organization that defends the rights of immigrant workers to ask for help. You can also file a complaint with the U.S. Department of Justice's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC). The OSC can be contacted at 1-800-255-7688 or 1-800-237-2515 (TDD). More information about the OSC and how it can help you is available on its website, www.usdoj.gov/crt/osc.