

# HR Insights

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## Form I-9 Considerations for Summer Employees

Each summer, an influx of individuals join the workforce. Summer employment offers younger workers an opportunity to gain real-life job experience; for others, such as teachers and retirees, seasonal positions give them the chance to earn extra income. In some industries, the summer months can be the busiest and most profitable of the year.

While the increase of available workers during this time can benefit many organizations, there are important considerations for employers to keep in mind. Among these considerations is the Immigration Reform and Control Act of 1986 (IRCA). This law requires all employers, regardless of size, to hire only individuals who may legally work in the United States. To comply with this law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification form (Form I-9).

Complying with Form I-9 requirements can be challenging, especially when it comes to summer employees. For example, employers must know when to complete a new form for returning hires and be prepared to address situations where minor employees do not have identity documents. Form I-9 errors can subject employers to expensive violations, fines and penalties. Additionally, the federal government has increased its Form I-9 enforcement efforts in recent years, making compliance especially critical. By reviewing Form I-9 requirements for summer hires, employers can strengthen their operations and reduce their potential legal risks.

This article explores Form I-9 considerations for summer employees.

### New Hires

Employers must complete a Form I-9 for each individual they hire to perform labor or services in return for wages and other remunerations. This requirement applies to new employees hired in the United States after Nov. 6, 1986. Accordingly, organizations that employ summer workers who meet these criteria must complete a Form I-9 for each new hire.

### Rehired Employees

Many summer employees return to work for the same employer each year. In these situations, an employer may be able to use an employee's original Form I-9 to meet the IRCA's verification requirements. Specifically, if an employer rehires an employee within three years from the date of their previous Form I-9, the employer is not required to complete a new form for that individual. Instead, the employer must complete Section 3 of the employee's original Form I-9.

Employers must complete Section 3 when:

- Reverifying employment authorization documentation for current employees
- Reverifying or updating employment authorization documentation for rehired employees
- Recording name changes and other identity information for current employees

When completing Section 3, an employer may need to reverify an employee's work authorization document if it has an expiration date. If an employer fails to reverify an employee's work authorization document, they may be subject to penalties and fines for knowingly employing an individual who is not authorized to work in the United States. In addition, employers should ensure that any necessary reverification is completed in a timely manner.

If an employee is rehired more than three years from the date their previous Form I-9 was completed, the employer must complete a new form. Further, if a new version of Form I-9 has been released since the employee completed their previous form, the employer and the employee must complete a new Form I-9, including having the employee provide identity and employment authorization documents.

## Continuing Employees

In certain circumstances, some interruptions in employment do not constitute a new hire or rehire for Form I-9 purposes. When an employee is continuing their employment and has a reasonable expectation of employment at all times, they are not considered a new hire or rehire and are not required to complete a new Form I-9. According to the U.S. Department of Homeland Security's [Handbook for Employers](#), situations that typically constitute continuing employment include the following:

- Approved paid or unpaid leave on account of the employee's illness or pregnancy, maternity or paternity leave, vacation, study, union business, a family member's illness or disability, or other temporary leave that has been approved
- A temporary layoff for lack of work
- A strike or labor dispute
- Reinstatement after disciplinary suspension for wrongful termination found unjustified by any court, arbitrator or administrative body
- Seasonal employment

To help determine whether an employee who is continuing their employment has a reasonable expectation of employment at all times, an employer should consider the following factors:

- The individual was employed on a regular and substantial basis.
- The individual complied with the employer's established and published policies regarding their temporary absence.
- The employer's past history of recalling absent employees for employment indicates the likelihood that the individual will resume working for the employer within a reasonable period of time.
- Another worker has not permanently taken the individual's former position.
- The individual has not sought or received benefits during their employment absence that are inconsistent with an expectation of resuming employment within a reasonable period of time.
- The employer's financial condition allows the individual to resume employment within a reasonable period of time.
- The communication between the employer and the individual indicates the individual will resume employment within a reasonable period of time.

If an employee is deemed a continuing employee, the employer should still review the employee's previously completed Form I-9 to ensure that no additional updates are needed, such as reverifying employment authorization documents.

## Unpaid Interns

Employers need to distinguish between paid and unpaid interns when complying with Form I-9 requirements. For Form I-9 purposes, paid interns are treated similarly to regular employees. Therefore, if a paid intern is a new hire, rehired after more than three years and not considered a continuing employee, an employer must

complete a new Form I-9. Since unpaid interns do not receive wages and other remunerations, they are not required to complete Form I-9.

## Minors

Minors—individuals under age 18—can complete Form I-9 and present identity and employment authorization documentation. However, if a minor is unable to present an identity document from List B of Form I-9, the minor's parent or legal guardian may establish the minor's identity. To do so, the minor's parent or legal guardian must follow these steps:

- Complete the minor's information in Section 1 of Form I-9.
- Check the box by the minor's status.
- Enter "minor under age 18" in the signature field.
- Complete the preparer and/or translator certification field.

The employer must then enter "minor under age 18" under List B when completing Section 2 of the form.

## Takeaway

Form I-9 requirements impact all employers. As enforcement actions continue to escalate, it's vital that employers understand their Form I-9 compliance obligations for summer employees. By understanding these responsibilities, employers can determine how well their organizations are meeting Form I-9 requirements and identify whether they need to make any changes.

This article provides a general overview of Form I-9 considerations for summer employees and is not intended to be exhaustive. Due to the complexities of complying with Form I-9 requirements, employers are encouraged to seek legal counsel to discuss specific issues and concerns.

Contact ToughComp today for additional Form I-9 resources.

