

What Action Must An Employer Take Under The Immigration Reform And Control Act If An Employee Gains Employment

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The Immigration Reform and Control Act (IRCA) of 1986 represents a significant piece of legislation that governs employment practices related to unauthorized employment and immigration status verification in the United States. When an employee gains employment, employers are legally required to undertake specific actions to ensure compliance with IRCA provisions. Failure to adhere to these obligations can result in substantial penalties, including fines and sanctions. This article provides a comprehensive overview of the steps an employer must take under IRCA when onboarding a new employee, highlighting key procedures, documentation requirements, and best practices to maintain lawful employment practices.

Understanding the Immigration Reform and Control Act (IRCA)

Before delving into specific employer actions, it is essential to understand the core objectives of IRCA. Enacted to curb illegal immigration, IRCA primarily focuses on:

- Penalizing employers who knowingly hire or continue to employ unauthorized workers.
- Establishing procedures for verifying the employment eligibility of new hires.
- Creating a framework for legal employment of eligible foreign nationals.

Central to IRCA is the requirement for employers to verify the identity and employment authorization of all new employees hired after November 6, 1986.

Key Responsibilities of Employers Under IRCA When Hiring Employees

When an employee gains employment, the employer's primary legal obligation under IRCA is to verify that the individual is authorized to work in the United States. This involves a series of steps designed to authenticate

employment eligibility documents and maintain proper records.

1. Completing the Form I-9, Employment Eligibility Verification

The cornerstone of IRCA compliance is the completion of Form I-9 for every new employee. Employers must:

- Complete the form within three business days of the employee's start date.
- Examine original, unexpired documents presented by the employee to verify identity and employment authorization.
- Record the document details accurately on the form.
- Sign and date the certification section, attesting to the authenticity of the verification.

Key Points:

- Form I-9 must be retained for three years after the date of hire or one year after employment is terminated, whichever is later.
- Employers should not specify which documents an employee must present; they must accept valid documents from the List of Acceptable Documents.

2. Acceptable Documents for I-9 Verification

The law provides a list of documents that can establish identity and employment authorization. These are divided into three categories:

- List A: Documents that establish both identity and employment authorization (e.g., U.S. Passport, Permanent Resident Card).
- List B: Documents that establish identity only (e.g., Driver's License, State ID card).
- List C: Documents that establish employment authorization only (e.g., Social Security Card, Birth Certificate).

Employers must accept either one document from List A or one from List B and one from List C.

3. Verification of Identity and Employment Authorization

Employers must:

- Review original documents to verify their authenticity.
- Not accept expired documents unless the law permits.

- Record document details correctly on the Form I-9.
- Ensure the verification process occurs within the stipulated timeframe.

Legal Limitations and Employer Responsibilities

While verifying employment eligibility, employers must also adhere to legal constraints designed to prevent discrimination.

1. Anti-Discrimination Laws

Employers are prohibited from:

- Discriminating against an individual during the hiring process based on national origin or citizenship status.
- Requesting more or different documents than those listed on the Form I-9.
- Rejecting valid documents that appear genuine.

It is vital for employers to treat all candidates equally and conduct verification uniformly.

2. Avoiding Unauthorized Employment

Employers must ensure they do not knowingly employ unauthorized workers. Continuous employment verification and compliance are critical to avoiding penalties.

Additional Employer Actions Post-Verification

Beyond initial verification, employers should implement best practices to maintain IRCA compliance.

1. Recordkeeping and Documentation

- Maintain all Form I-9 records for the required period.
- Store documents securely and accessibly.
- Conduct periodic internal audits to ensure compliance.

2. Reverification and Updates

- Reverify employment eligibility if a work authorization document has an expiration date.
- Use the Form I-9 process again for reverification, ensuring it is completed before the expiration date of the current document.

3. Training and Policies

- Train HR personnel and managers on IRCA requirements.
- Develop clear policies regarding document inspection and anti-discrimination practices.
- Stay updated with any changes in documentation requirements or legal standards.

Handling Violations and Penalties

Employers failing to comply with IRCA obligations risk severe penalties, including fines, sanctions, and even criminal charges in cases of willful violations.

1. Common Violations

- Failing to complete or properly retain Form I-9.
- Accepting invalid or expired documents.
- Discriminating against applicants during verification.
- Continuing to employ unauthorized workers.

2. Penalties and Enforcement

- Civil fines for each violation.
- Criminal penalties for knowingly hiring or continuing to employ unauthorized workers.
- Increased scrutiny and audits from Immigration and Customs Enforcement (ICE).

Employers should proactively maintain compliance to avoid these consequences.

Best Practices for Employers to Ensure IRCA Compliance

To effectively comply with IRCA when an employee gains employment, employers

should:

- Implement comprehensive onboarding procedures that include Form I-9 completion.
- Train staff responsible for verification on legal requirements and anti-discrimination laws.
- Use electronic verification tools when appropriate to streamline compliance.
- Conduct periodic audits of I-9 records.
- Stay informed about changes in immigration laws and document requirements.
- Foster a workplace culture that values legal employment practices.

Conclusion

In summary, when an employee gains employment, employers are legally mandated under the Immigration Reform and Control Act to verify employment eligibility through the completion of Form I-9, maintain accurate records, and ensure non-discriminatory practices throughout the verification process. Proactive compliance not only helps avoid penalties but also promotes a lawful and fair workplace environment. Staying informed about IRCA requirements and implementing robust procedures are essential steps for any employer seeking to operate within the bounds of U.S. immigration law.

Frequently Asked Questions

What is the initial action an employer must take when an employee gains employment under the Immigration Reform and Control Act?

The employer must verify the employee's identity and employment authorization by completing the Form I-9 process within the first three days of employment.

Are employers required to re-verify an employee's employment authorization after initial verification?

Yes, if the employee's work authorization documents have an expiration date, the employer must re-verify the employee's eligibility before it expires.

What documentation is acceptable for verifying employment eligibility under IRCA?

Acceptable documents include U.S. passports, permanent resident cards, employment authorization documents, and other List A documents specified on Form I-9.

What are the consequences for employers who fail to properly verify new employees under IRCA?

Employers can face civil fines, penalties, and potential legal action for knowingly hiring or continuing to employ unauthorized workers.

Does the IRCA require employers to keep records of employee verification documents?

Yes, employers must retain Form I-9 for each employee for at least three years after hire or one year after employment ends, whichever is later.

Are employers permitted to specify which documents employees can present for employment verification?

No, employers cannot specify or request particular documents; employees can choose any acceptable documents from the List A or a combination of List B and List C.

What training or policies should employers implement regarding employment verification under IRCA?

Employers should establish and train staff on proper I-9 procedures, anti-discrimination policies, and compliance measures to ensure lawful verification practices.

How does the IRCA impact hiring practices for new employees?

Employers must conduct timely verification of all new hires' employment eligibility and avoid discriminatory practices during the verification process.

What steps should an employer take if an employee presents fraudulent documents during verification?

The employer should refuse to accept the documents, notify the appropriate authorities, and take appropriate legal action, including possible termination.

Is re-verification required for employees with permanent work authorization under IRCA?

No, employees with permanent work authorization (e.g., lawful permanent residents) generally do not require re-verification unless their status changes or expires.

Additional Resources

What Action Must An Employer Take Under The Immigration Reform And Control Act If An Employee Gains Employment

In today's dynamic labor market, compliance with federal immigration laws is more crucial than ever for employers. The Immigration Reform and Control Act (IRCA), enacted in 1986, establishes key requirements that employers must follow when hiring new employees to ensure they are legally authorized to work in the United States. Failure to comply can result in severe penalties, including hefty fines and disqualification from federal contracts. This article explores the specific actions an employer must take under IRCA when an employee gains employment, detailing the legal obligations, procedures, and best practices to ensure compliance.

Understanding the Foundations of the Immigration Reform and Control Act

Before diving into the specific actions required at the point of employment, it's essential to understand the core provisions of IRCA. The law primarily aims to prevent unauthorized employment by requiring employers to verify the employment eligibility of their workers. It also prohibits discrimination based on national origin or citizenship status.

Key Provisions of IRCA include:

- **Employment Eligibility Verification:** Employers must verify that all new hires are authorized to work in the U.S.
- **Anti-Discrimination Policies:** Employers cannot discriminate against individuals based on their immigration status during hiring, firing, or recruitment.
- **Legal Sanctions for Non-Compliance:** Employers face penalties if found employing unauthorized workers or failing to verify work authorization.

Understanding these foundational elements underscores why the actions discussed in this article are legally necessary and vital for compliance.

Initial Steps When an Employee Gains Employment

When a new employee is hired, the employer's primary responsibility under IRCA is to verify their eligibility to work in the U.S. This process involves several steps, which must be completed within specific time frames to avoid penalties.

1. Completion of Form I-9

The cornerstone of IRCA compliance is the completion of Form I-9, Employment Eligibility Verification. This form is mandated by the U.S. Citizenship and Immigration Services (USCIS) and must be filled out for every new hire.

Steps involved in completing Form I-9:

- Section 1 (Employee's information and attestation): The employee completes this section on or before their first day of employment, providing personal details and confirming their citizenship or immigration status.
- Section 2 (Employer's review and verification): The employer reviews the employee's documents that establish identity and employment authorization, then completes this section within three business days of the employee's start date.

Important considerations:

- The employer must physically examine original documents presented by the employee.
- Acceptable documents are categorized into List A (documents proving both identity and employment authorization), List B (identity only), and List C (employment authorization only).

2. Acceptable Documents for Verification

Employers should be familiar with the acceptable documents that employees may present to establish their identity and work authorization. Common documents include:

- List A documents: U.S. passport, Permanent Resident Card (Green Card), Employment Authorization Document (EAD), or a foreign passport with an appropriate visa and Form I-94.
- List B documents: State-issued driver's license, ID card, or school ID.
- List C documents: Birth certificate or Social Security card.

Employers are permitted to accept only original documents; photocopies are not sufficient for Form I-9 purposes.

3. Retention and Storage of Form I-9

Once completed, employers must retain the Form I-9 for each employee for at least three years after the date of hire or one year after employment ends, whichever is later. Proper storage—either physically or electronically—is crucial to demonstrating compliance in case of audits.

Best practices include:

- Keeping Forms in a secure, organized manner.
- Ensuring access is limited to authorized personnel.
- Regularly auditing Form I-9 records for completeness and accuracy.

Employer Responsibilities Post-Verification

Completing Form I-9 is the primary step, but IRCA compliance extends beyond initial verification. Employers must also stay vigilant to ongoing responsibilities and potential updates.

4. Monitoring and Re-verification

While most employees' work authorization remains valid throughout their employment, certain circumstances require re-verification:

- Expiration of work authorization documents: For example, an EAD with an expiration date.
- Change in employment status or visa status: Employers must re-verify if the employee's work authorization documents are set to expire.

Re-verification involves completing a new Form I-9 for the employee and examining current documentation.

5. Respecting Anti-Discrimination Laws

While verifying employment eligibility, employers must adhere to anti-discrimination provisions. This means:

- Not requesting more or different documents than necessary.
- Not refusing to hire or terminating employees based on their citizenship or immigration status.
- Ensuring the verification process is applied uniformly to all employees.

Violations of anti-discrimination rules can lead to legal repercussions, separate from IRCA penalties.

Handling Non-Compliance and Penalties

An employer's failure to properly verify employment eligibility or to adhere to other IRCA requirements can result in civil and criminal penalties.

Potential penalties include:

- Fines for each unlawful employment incident.
- Corrective actions or sanctions from federal agencies.
- Loss of federal contracts or licenses.

In cases of knowingly employing unauthorized workers, criminal charges can be pursued, including fines and imprisonment.

Best practices to mitigate risks:

- Conduct regular internal audits of Form I-9 records.
- Train HR staff and managers on IRCA requirements.
- Establish clear policies for document examination and retention.
- Use E-Verify, a federal electronic system, to supplement Form I-9 verification and provide additional assurance.

Leveraging E-Verify for Enhanced Compliance

Although not mandatory for all employers, E-Verify is a valuable tool that complements IRCA verification processes. It allows employers to electronically confirm the employment eligibility of new hires by matching information from Form I-9 against government databases.

Benefits of E-Verify include:

- Rapid confirmation of work authorization.
- Reduced risk of employing unauthorized workers.
- Demonstrating good-faith effort in compliance.

Employers should be aware that participation in E-Verify is voluntary for most employers, but some federal contractors are required to use it as a condition of their contracts.

Conclusion: The Path to Compliance

In summary, when an employee gains employment, the employer's responsibilities under IRCA are clear and multifaceted. The core action involves completing and retaining Form I-9 to verify employment eligibility within the prescribed timelines. Beyond initial verification, ongoing monitoring, training, and adherence to anti-discrimination laws are essential to maintaining compliance.

Employers should implement comprehensive policies and procedures for document verification, keep meticulous records, and stay informed about evolving immigration laws and best practices. By doing so, they not only avoid costly

penalties but also foster a lawful, fair, and inclusive workplace environment.

In an era of heightened immigration enforcement and scrutiny, proactive compliance with IRCA is not just a legal obligation—it's a strategic necessity that underscores an employer's commitment to lawful employment practices and ethical standards in the workforce.

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