

## Immigration/Employment of Foreign Nationals

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### Purpose

The federal Immigration Reform and Control Act (IRCA) amended the Immigration and Nationality Act by making it unlawful to hire, recruit or refer for a fee any individual who is not authorized to accept employment in the United States. This law seeks to preserve jobs for those who are legally entitled to them, and states that the employer must hire only United States citizens or aliens who are authorized to work in the United States. Additionally, all North Carolina State agencies, departments, institutions, community colleges, and local education agencies shall verify, in accordance with the E-Verify Program, each individual's legal status or authorization to work in the United States, after hiring the individual to work in the United States.

Advisory Note: Authority for the E-Verify Program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Control Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009.

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### Work Authorization

To ensure compliance with its provisions, IRCA mandates that employers certify the employment eligibility of all new employees (including United States citizens) hired on or after November 7, 1986, by requiring completion of the employment eligibility form, I-9, within three days of employment.

Verification of employment eligibility is not required for persons hired on or before November 6, 1986 who have been continuously employed by the same North Carolina agency since that date. If a current State employee accepts a position in a different North Carolina state agency, their employment eligibility must be confirmed by the

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completion of a new I-9 form. This procedure must be consistently followed with regard to every employee for whom verification of employment eligibility is required.

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### Employment Eligibility Verification (E-Verify Program)

In addition to the I-9 process, electronic verification using the internet based E-Verify Program is required for every newly hired employee who began work in an agency/university on or after January 1, 2007, except in the case of Local Education Agencies (LEAs). Verification by the E-Verify Program is required for all LEA employees who were newly hired on or after March 1, 2007. This program is only to be used to determine the employment eligibility of newly hired employees. Attempting to verify the employment eligibility status of a person who was employed by the State before January 1, 2007 is strictly prohibited.

A designated representative from each State agency, department, institution, community college, and local education agency is required to agree to and sign the Department of Homeland Security's Memorandum of Understanding in order to begin using the E-Verify Program.

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### When to Verify Eligibility

An agency may not request documentation that a person is eligible to work in the United States until an offer of employment is made and accepted by the candidate. For that reason, an employing agency or university must secure proper administrative approvals and must complete all pre-employment screening before an offer of employment is made. In certain cases the offer of employment may be conditional, but the conditions of the pending offer must be clearly stated to the candidate, and must be otherwise legally valid. Only after that offer of employment is made may the agency or university request documents for the completion of the I-9 form and the verification.

For a United States citizen or permanent resident, if documentation is unavailable at the time of initial employment, and the employee has applied for that documentation, a receipt for that application is required, within the first three days of employment, for completion of the I-9 form. The employee must produce the original document within

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ninety days of hire. The E-Verify verification may be delayed until the employee submits the original documents.

Failure to complete the I-9 form or to provide documentation within three business days will result in the employee's separation from State employment.

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### Employees Considered "not newly hired"

A person is not considered newly hired if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

New hires do not include:

- an employee returning from a paid or unpaid leave approved by the employer;
- an employee who has been promoted, demoted, reassigned, or received a horizontal transfer, but has not changed agencies/universities;
- an employee returning from a reduction-in-force if returning to the same agency/university;
- an employee returning after a wrongful discharge; or
- an employee engaged in seasonal employment that has a reasonable expectation to return to work in the same capacity.

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### Retention of Documentation

Agencies are required to retain I-9 forms for the duration of a person's employment. If a person separates from an agency or university, the form must be kept on file for at least three years after the person's start date, or for one year after the separation date, whichever is later. Printouts of confirmations that new employees have been verified as eligible to be employed by the Basic Pilot Program should be attached to I-9 forms and maintained for the same length of time as the I-9 form.

Advisory Note: Documents used to establish work authorization should be photocopied and stapled to the original I-9.

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Proof of legal employment eligibility in the United States must be maintained throughout an employee's tenure with the employer. Therefore, State agencies, departments, institutions, community colleges, and local education agencies must remain cognizant of the fact that certain employees may only be legally eligible to work in the United States for limited periods of time. If an employee's legal employment eligibility is temporary, it is the employer's responsibility to verify that the employee renews his or her employment eligibility, or separate that person from employment upon expiration of the temporary eligibility period.

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### Re-verification

Re-verification of an employee's eligibility to work in the United States should only be conducted on those employees who attested in Section 1 of the I-9 form that they are aliens authorized to work in the United States for a limited period of time. Reverification are not required, and are not permitted to be completed, on United States Citizen and Lawful Permanent Resident employees. The E-Verify Program is not to be used for reverification purposes. Thus, reverification of employment eligibility only involves the physical examination of employment eligibility documents, not the electronic verification of those documents. If the employee's documents are reverified electronically, the employer will be in violation of the Memorandum of Understanding, which details the employer's E-Verify Program obligations, as required by the United States Department of Homeland Security.

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