

Code of Federal Regulations

v) The individual may present either an original document which establishes both employment authorization and identity, or an original document which establishes employment authorization and a separate original document which establishes identity. The identification number and expiration date (if any) of all documents must be noted in the appropriate space provided on the Form I-9.

(A) The following documents, so long as they appear to relate to the individual presenting the document, are acceptable to evidence both identity and employment eligibility:

LIST A DOCS

- (1) United States passport (unexpired or expired);
- (2) Alien Registration Receipt Card or Permanent Resident Card, Form I-551;
- (3) An unexpired foreign passport that contains a temporary I-551 stamp;
- (4) An unexpired Employment Authorization Document issued by the Immigration And Naturalization Service which contains a photograph, Form I-766; Form I-688, Form I-688A, or Form I-688B;
- (5) In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, an unexpired foreign passport with an Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

(B) The following documents are acceptable to establish identity only:

List B DOCS

- (1) For individuals 16 years of age or older:
 - (i) A driver's license or identification card containing a photograph, issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act). If

the driver's license or identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;

- (ii) School identification card with a photograph;
 - (iii) Voter's registration card;
 - (iv) U.S. military card or draft record;
 - (v) Identification card issued by federal, state, or local government agencies or entities. If the identification card does not contain a photograph, identifying information shall be included such as: name, date of birth, sex, height, color of eyes, and address;
 - (vi) Military dependent's identification card;
 - (vii) Native American tribal documents;
 - (viii) United States Coast Guard Merchant Mariner Card;
 - (ix) Driver's license issued by a Canadian government authority;
- (2) For individuals under age 18 who are unable to produce a document listed in paragraph (b)(1)(v)(B)(1) of this section, the following documents are acceptable to establish identity only:
 - (i) School record or report card;
 - (ii) Clinic doctor or hospital record;
 - (iii) Daycare or nursery school record.
 - (3) Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B)(1) or (2) of this section are exempt from producing one of the enumerated identity documents if:
 - (i) The minor's parent or legal guardian completes on the Form I-9 Section 1-"Employee Information and Verification" and in the space for the minor's signature, the parent or legal guardian writes the words, "minor under age

18.”

(ii) The minor's parent or legal guardian completes on the Form I-9 the “Preparer/Translator certification.”

(iii) The employer or the recruiter or referrer for a fee writes in Section 2-“Employer Review and Verification” under List B in the space after the words “Document Identification #” the words, “minor under age 18.”

(4) Individuals with handicaps, who are unable to produce one of the identity documents listed in paragraph (b)(1)(v)(B)(1) or (2) of this section, who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program, may follow the procedures for establishing identity provided in this section for minors under the age of 18, substituting where appropriate, the term “special placement” for “minor under age 18”, and permitting, in addition to a parent or legal guardian, a representative from the nonprofit organization, association or rehabilitation program placing the individual into a position of employment, to fill out and sign in the appropriate section, the Form I-9. For purposes of this section the term individual with handicaps means any person who

(i) Has a physical or mental impairment which substantially limits one or more of such person's major life activities,

(ii) Has a record of such impairment, or

(iii) Is regarded as having such impairment.

(C) The following are acceptable documents to establish employment authorization only: LIST C Docs

(1) A social security number card other than one which has printed on its face “not valid for employment purposes”;

(2) A Certification of Birth Abroad issued by the Department of State, Form FS-545;

(3) A Certification of Birth Abroad issued by the Department of State, Form DS-1350;

(4) An original or certified copy of a birth

certificate issued by a State, county, municipal authority or outlying possession of the United States bearing an official seal;

(5) Native American tribal document;

(6) United States Citizen Identification Card, INS Form I-197;

(7) Identification card for use of resident citizen in the United States, INS Form I-179;

(8) An unexpired employment authorization document issued by the Immigration and Naturalization Service.

(vi) Special rules for receipts. Except as provided in paragraph (b)(1)(iii) of this section, unless the individual indicates or the employer or recruiter or referrer for a fee has actual or constructive knowledge that the individual is not authorized to work, an employer or recruiter or referrer for a fee must accept a receipt for the application for a replacement document or a document described in paragraphs (b)(1)(vi)(B)(1) and (b)(1)(vi)(C)(1) of this section in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

(A) Application for a replacement document. The individual:

(1) Is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged;

(2) Presents a receipt for the application for the replacement document within the time specified in this section; and

(3) Presents the replacement document within 90 days of the hire or, in the case of reverification, the date employment authorization expires; or

(B) Form I-94 indicating temporary evidence of permanent resident status. The individual indicates in section 1 of the Form I-9 that he or she is a lawful permanent resident and the individual:

(1) Presents the arrival portion of Form I-94 containing an unexpired "Temporary I-551" stamp and photograph of the individual, which is designated for purposes of this section as a receipt for Form I-551; and

(2) Presents the Form I-551 by the expiration date of the "Temporary I-551" stamp or, if the stamp has no expiration date, within 1 year from the issuance date of the arrival portion of Form I-94; or

(C) Form I-94 indicating refugee status. The individual indicates in section 1 of the Form I-9 that he or she is an alien authorized to work and the individual:

(1) Presents the departure portion of Form I-94 containing an unexpired refugee admission stamp, which is designated for purposes of this section as a receipt for the Form I-766, Form I-688B, or a social security account number card that contains no employment restrictions; and

(2) Presents, within 90 days of the hire or, in the case of reverification, the date employment authorization expires, either an unexpired Form I-766 or Form I-688B, or a social security account number card that contains no employment restrictions, and a document described under paragraph (b)(1)(v)(B) of this section.

(vii) If an individual's employment authorization expires, the employer, recruiter or referrer for a fee must reverify on the Form I-9 to reflect that the individual is still authorized to work in the United States; otherwise the individual may no longer be employed, recruited, or referred. Reverification on the Form I-9 must occur not later than the date work authorization expires. In order to reverify on the Form I-9, the employee or referred individual must present a document that either shows continuing employment eligibility or is a new grant of work authorization. The employer or the recruiter or referrer for a fee must review this document, and if it appears to be genuine and to relate to the individual, reverify by noting the document's identification number and expiration date on the

Form I-9.

(viii) An employer will not be deemed to have hired an individual for employment if the individual is continuing in his or her employment and has a reasonable expectation of employment at all times.

(A) An individual is continuing in his or her employment in one of the following situations:

(1) An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(2) An individual is promoted, demoted, or gets a pay raise;

(3) An individual is temporarily laid off for lack of work;

(4) An individual is on strike or in a labor dispute;

(5) An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(6) An individual transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the individual's Form I-9 to the receiving unit;

(7) An individual continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and Forms I-9 where applicable. For this purpose, a related, successor, or reorganized employer includes:

(i) The same employer at another location;

(ii) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

(iii) An employer who continues to employ any employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this subsection, any agent designated to complete and maintain the Form I-9 must record the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association; or

(8) An individual is engaged in seasonal employment.

(B) The employer who is claiming that an individual is continuing in his or her employment must also establish that the individual expected to resume employment at all times and that the individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of employment include, but are not limited to, the following:

(1) The individual in question was employed by the employer on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the employer;

(2) The individual in question complied with the employer's established and published policy regarding his or her absence;

(3) The employer's past history of recalling absent employees for employment indicates a likelihood that the individual in question will resume employment with the employer within a reasonable time in the future;

(4) The former position held by the individual in question has not been taken permanently by another worker;

(5) The individual in question has not sought or

obtained benefits during his or her absence from employment with the employer that are inconsistent with an expectation of resuming employment with the employer within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

(6) The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future; or

(7) The oral and/or written communication between employer, the employer's supervisory employees and the individual in question indicates that it is reasonably likely that the individual in question will resume employment with the employer within a reasonable time in the future.