

UC Davis Policy and Procedure Manual

Chapter 380, Personnel--General

Section 06, Employment Eligibility Verification

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Responsible Department: Accounting and Financial Services

Source Document: Immigration Reform and Control Act of 1986

I. Purpose

This section outlines requirements for verifying an individual's eligibility for employment in compliance with the Immigration Reform and Control Act of 1986 and subsequent amendments.

II. Background

The Immigration Reform and Control Act of 1986 (IRCA) makes it unlawful to hire unauthorized aliens, and requires employers to verify both the identity and the employment eligibility of every individual hired and to maintain records of the verification. The United States Citizenship and Immigration Service (USCIS) requires employers to use Form I-9, Employment Eligibility Verification to comply with the verification requirements. The verification process applies both to U.S. citizens (American born or foreign born) and to aliens. Employers who do not comply are subject to civil and criminal penalties.

III. Policy

A. Aliens authorized for employment

Federal law regulates employment of aliens. Immigrants (permanent residents) may be employed without restriction. Certain classes of nonimmigrant aliens are authorized for employment as a condition of their admission to the United States, and so long as the employment is consistent with the terms of their admission, specific employment authorization by the USCIS need not be requested. Other classes of nonimmigrant aliens may be employed if specific USCIS authorization is obtained. Some classes of nonimmigrant aliens are restricted from any employment. Refer to Sections 380-14, Employment of Aliens, and 380-64, Conditions of Visas, for more detailed information.

B. Nondiscrimination

IRCA and Title VII of the Civil Rights Act prohibit discrimination in employment or recruitment on the basis of national origin and establish civil penalties for violations. The purpose of the employer verification provisions of IRCA is not to discriminate against those with the right to work in the U.S., but rather to halt unlawful employment of those not entitled to work.

C. Verification requirements

1. New employees

Departments must verify, on or before the date of hire, all newly hired employees' identities and verify that they have authorization to work in the United States.

2. Previous University employees

A Form I-9 is not required when rehiring an employee within 3 years of the initial date of hire, as long as the individual remains authorized to work and a copy of the original I-9 form is still on file. Information regarding prior I-9 forms is available in the Payroll/Personnel System for a period of 13 months following separation of employment. At UCDHS the information is maintained by and available from the Human Resources Records Unit. You may reverify authorization to work by completing a new Form I-9 or you may reverify or update the original form by completing Section 3, Updating and Reverification.

3. Continuing employees

Employees hired before November 7, 1986, are not subject to the verification process unless a break in service occurs. Leaves of absence, transfers, promotions, demotions, salary changes, and rehires following layoff, disciplinary suspension, and certain other actions do not constitute a break in service.

4. Non-salaried appointees

Departments must verify on or before the date of hire all newly hired without-salary employees' identities and verify that they have authorization to work in the United States. Authorization to work must be reverified if the without-salary status changes to salaried, or if benefits (e.g., insurance coverage, membership in retirement system) are given that infer that the individual is an employee.

5. Independent contractors

Eligibility of independent contractors need not be verified. At UCD, this exemption applies to individuals receiving an honorarium payment (see Section 380-76) and independent consultants (see Section 380-70). However, an employer cannot engage the labor services of an independent contractor if they know that the worker is not authorized to work.

D. Responsibilities

1. Campus department heads are responsible for complying with IRCA and UCD regulations for all hiring in their department. Each department head should designate an individual to complete the verification process in order to assure that no individual begins work prior to presenting the appropriate documents verifying identity and employment eligibility or continues to work beyond the expiration of such eligibility. Citations or penalties for violation of IRCA (see III-E, below) must be paid by the hiring department.
2. Campus Accounting & Financial Services--Payroll Services is the office of record for Employment Eligibility Verification forms for all campus departments. Payroll Services will respond to any inquiries or audits of the Form I-9 by the USCIS .
3. UCDHS Human Resources is responsible for administering IRCA for UCDHS departments. UCDHS Employment Eligibility Verification forms will be retained in UCDHS Human Resources.

E. Penalties for noncompliance

1. Substantial civil penalties may be imposed for violations of IRCA. The amount of the penalty increases for each violation.
2. Criminal penalties may be invoked where there is a "pattern or practice" of violation of the requirements of IRCA.

IV. Procedures

Campus note: Form I-9 is available from Fulfillment House.

UCDHS note: UCDHS Human Resources performs all verification procedures for UCDHS departments.

A. Verification of work authorization status

1. The prospective employee must present documentation establishing identity and employment eligibility to the hiring department at the time of hire. The prospective employee completes and signs Section 1, Employee Information and Verification of the Form I-9. Acceptable documents and information regarding expiration dates are in Exhibit

A.

2. The individual designated by the department head to verify work authorization status must physically examine the original documents, then complete Section 2, Employer Review and Verification and attest on Form I-9 that he or she has verified the identity and employment eligibility of the individual. This attestation may be made if the documents reasonably appear to be genuine. However, if the verifier has independent knowledge that the individual is not authorized to work, he/she should not verify work authorization.
3. The department may wish to retain a copy of the completed I-9 for departmental records. The information contained on the Form I-9 may be used only for enforcement of immigration laws.
4. The appointment ending date shall be on or before the expiration date of the work authorization documentation.
5. The department attaches the original Form I-9 to the other University forms required for initial employment and then forwards these forms to Payroll Services.
6. If an individual is unable to present the required documents because they have been lost, stolen, or damaged, a receipt showing application for a replacement document may be presented instead. However, receipts for applications to the USCIS for initial or extension of work authorization are not acceptable. A copy of the receipt is then attached to the Form I-9. The actual documents must be presented to the department within 90 days of hire, otherwise employment must be terminated.

B. Extension of work authorization

1. Employment eligibility ends on the expiration date of the employment eligibility document or legal status in the U.S. An employee who wishes to continue employment must, prior to the expiration date, present a document that shows continuing employment eligibility (for example, change of status, extension of stay, or extension of work authorization). If the document appears to be genuine, the department completes Form I-9, Section 3, and extends the appointment end date.
2. When the University has filed a timely petition to extend the status of an individual with an H-1B, O-1, or TN visa (temporary workers and Canadian citizens), the employee's appointment may be extended for up to 240 days pending approval of the petition by the USCIS. The department prepares a payroll/personnel system transaction extending the appointment for 240 days and attaches an I-9 and a copy of the application for extension. When USCIS approves the extension, the department prepares a new payroll/personnel system transaction and Form I-9.

C. Academic-year appointees

Departments may provide advance payment of new faculty on academic-year appointments (9 months paid over 12 months) prior to their arrival on campus, unless the appointee is or will be in the U.S. on a nonimmigrant visa.

1. The hiring department mails the appointee a blank Form I-9 before the payroll/personnel system transaction is processed. The appointee completes and signs Section 1 and returns the form with photocopies of the supporting documents. By the service begin date, the department should complete the official Form I-9 and forward it to Payroll Services.
2. If the appointee is, or will be, in the U.S. on a nonimmigrant visa and therefore will not yet have appropriate documentation, departments should wait to process the payroll/personnel system transaction until the appointee has the proper documents.

V. Further Information

Questions may be directed to Payroll Services, UCDHS Human Resources, or Services for International Students & Scholars. Information regarding visas may be obtained from Services for International Students & Scholars.

VI. References and Related Policies

- A. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, enacted 9/30/96.
- B. Immigration Reform and Control Act of 1986, Public Law 99-603, enacted 11/6/86.
- C. Code of Federal Regulations, Title 8, Section 274a, Control of Employment of Aliens (<http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>).
- D. Handbook for Employers, Publication M-274, revised 11/21/91.
- E. U.S. Citizenship and Immigration Services Web site (<http://www.uscis.gov>).
- F. UCD Policy & Procedure Manual (<http://manuals.ucdavis.edu/PPM/about.htm>):
 - 1. Section 380-14, Employment of Aliens (Noncitizens).
 - 2. Section 380-64, Conditions of Visas for Alien (Noncitizen) Students, Scholars, and Visitors.
 - 3. Section 380-70, Independent Consultants.
 - 4. Section 380-76, Honoraria and Other Additional Compensation.
- G. Payroll/Personnel System Manual, Section K-32 (<http://pps.ucdavis.edu/PPSManual.pdf>).