



U.S. Department of Justice
Civil Rights Division
Office of Special Counsel for Immigration-Related
Unfair Employment Practices

Look At The Facts Not At The Faces.

Your Guide To Fair Employment.



Introduction

This guide is designed to help you, the employer, understand and comply with the Immigration and Nationality Act (INA). In short, INA requires you to hire and/or retain only those persons authorized to work in the United States. It also requires you to protect workers against discrimination on the basis of immigration status, nationality, accent, or appearance. This guide provides the steps for both verifying employees' work eligibility and for ensuring that their civil rights are not violated—when you are making hiring decisions.

First, the guide defines INA fully. It describes how the law affects you and explains how to avoid immigration-related employment discrimination. It outlines easy-to-follow procedures for hiring employees and explains the “Employment Eligibility Verification Process” (Form I-9). The guide includes a list of documents that are acceptable in determining employment eligibility. Finally, it provides you with questions and answers to “tricky” hypothetical situations.

If you have further questions about how to comply with INA, please contact the Office of Special Counsel (OSC) for Immigration-Related Unfair Employment Practices of the U.S. Department of Justice. Another excellent source of information on this topic is The Handbook for Employers published by the Immigration and Naturalization Service (INS). To obtain a copy of the Handbook, please contact the INS.

Staying in compliance with INA's antidiscrimination provisions—and avoiding costly penalties and fines—is a simple matter. Just “look at the facts, not at the faces” when making hiring decisions, and follow these three basic rules:

- **Fill out an “Employment Eligibility Verification” form (INS Form I-9) for every new employee, including U.S. citizens.**

- **Allow your employees to show you documents of their choice—as long as the documents prove identity and work eligibility and appear on INS' list of acceptable documents. You may not ask for specific documents.**

- **Do not ask for more documents than required.**

For more information on INA's antidiscrimination provisions, please contact OSC at the Civil Rights Division, U.S. Department of Justice, P.O. Box 27728, Washington, DC 20038-7728 or call 1-800-255-8155. The TDD number for the hearing impaired is 1-800-362-2735.

For a copy of the Handbook for Employers, please contact the U.S. Immigration and Naturalization Service at 425 Eye Street, Washington, DC 20536.

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What is INA?

The Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act of 1986 (IRCA) was the first Federal law making it illegal for employers to knowingly hire persons who are not authorized to work in the United States. The law was an attempt to reduce the stream of undocumented workers entering this country in search of jobs.

INA requires that you, as an employer, check documents to confirm the identity and work eligibility of all persons hired after November 1986. To remain in compliance, you must—

- **Hire only those persons authorized to work in the United States.**

- **Ask all new employees to show documents that establish both identity and work authorization.**

- **Complete the INS Employment Eligibility Verification Form I-9 for every new employee—U.S. citizens and noncitizens.**

Noncompliance with the Form I-9 requirements may result in sanctions against employers.

Congress also recognized that these employer sanctions might discourage you from hiring certain eligible workers if they looked or sounded foreign. Therefore, the law also prohibits discrimination in hiring and firing on the basis of citizenship status or national origin. Employers who discriminate may be required to pay fines and penalties, to hire or rehire the employee, and to pay back wages.



How Does INA Affect You?

As an employer:

- **INA makes it unlawful for an employer to knowingly hire, recruit, or refer for a fee any individual who is not authorized to work in the United States. It is also unlawful to continue to employ an undocumented worker or one who loses authorization to work. (Those hired before November 6, 1986, do not fall within this category.)**
- **You may hire anyone whose documents prove identity and work authorization in accordance with the I-9 requirements. There are many documents and combinations of documents that are acceptable, as long as they appear to be reasonably genuine. (For a list of acceptable documents, see the back of the I-9 form.)**
- **You must treat all job applicants and employees equally—whether they are U.S. citizens or noncitizens. This means you may not discriminate in hiring, firing, recruiting, or referring for a fee, nor are you permitted to retaliate against an employee who has filed a discrimination charge or participated in an investigation.**

Types of Immigration-Related Employment Discrimination:

- **Citizenship status discrimination refers to unequal treatment because of citizenship or immigration status.**
- **National origin discrimination refers to unequal treatment because of nationality, which includes place of birth, appearance, accent, and can include language.**
- **The Office of Special Counsel (OSC) enforces the provisions against discrimination. OSC covers all cases of discrimination based on citizenship status by employers of four or more employees. It covers national origin discrimination with employers of four to fourteen employees. The Equal Employment Opportunity Commission has jurisdiction over employers of 15 or more.**

What Are INA's I-9 Requirements?

“I-9” is short for Form I-9, the “Employment Eligibility Verification” form developed by INS as a way for employers to document the fact that they are hiring only persons who are authorized to work in the United States. Over time, the term “I-9 requirements” has come to describe the entire process of verifying worker eligibility outlined out in INA.

As an employer, to comply with INA's I-9 requirements, you must—

- Complete the I-9 form and keep it on file for at least 3 years from the date of employment or for 1 year after the employee leaves the job, whichever is later. You must also make the forms available for government inspection upon request.
- Verify, on the I-9 form, that you have seen documents establishing identity and work authorization for all your new employees—U.S. citizens and noncitizens alike—hired after November 6, 1986.
- Accept any valid documents presented to you by your employee. You may not ask for more documents than those required and may not demand to see specific documents, such as a “green card.”
- Remember that work authorization documents must be renewed on or before their expiration date and the I-9 form must be updated—this is also called “reverification.” At this time, you must accept any valid documents your employee chooses to present, whether or not they are the same documents provided initially. (Note: You don't need to see an identity document when the I-9 is updated.)

Remember, you are free to hire anyone who can show documents establishing his or her identity and authorization to work. Any of the documents (or combination of documents) listed on the back of Form I-9 are acceptable as long as they appear to be reasonably genuine.



How Can You Avoid Immigration-Related Employment Discrimination?

As an employer, to comply with INA's antidiscrimination provisions, you should—

- Let the employee choose which documents to present, as long as they prove identity and work authorization and are included in the acceptable list on the back of the I-9 form.
- Accept documents that appear to be genuine.

As an employer, to avoid employment discrimination based on nationality or citizenship status, you must—

- Treat all people the same in announcing the job, taking applications, interviewing, offering the job, verifying eligibility to work, hiring, and firing.
- Remember that U.S. citizenship, or nationality, belongs to all individuals born of a U.S. citizen and all persons born in Puerto Rico, Guam, the Virgin Islands, Northern Mariana Islands, American Samoa, and Swains Island. Citizenship is granted to legal immigrants after they complete the naturalization process.

- Avoid “citizens only” hiring policies or requiring that applicants have a particular immigration status. In most cases, these practices are illegal.
- Give out the same job information over the telephone, and use the same application form for all applicants.
- Base all decisions about firing on job performance and/or behavior, not on appearance, accent, name, or citizenship status of your employees.



What Would You Do?

Read each of the cases below. Circle “Yes” or “No.” Answers are given below.

1. Saving Time

Your crew boss catches you before you start interviewing people for a job. He says, “Find out if those two near the door have their ‘green cards’ before you waste your time.”

Did you discriminate in hiring?

Yes No

2. The Cooperative Executive

You are president of a company. After hearing about INA’s penalties for hiring undocumented workers, you issue a memo stating, “Let’s go along with the government on this one. Please be careful when hiring people who look like they crossed the border illegally.”

Have you committed national origin discrimination?

Yes No

How about citizenship status discrimination?

Yes No

3. On the Way Out

The rainy spring caused your lettuce harvest to be less abundant than usual. You need fewer farm workers than you hired for the season. In deciding between Héctor Fernández and José González, you keep Héctor because he is a legal permanent resident and José, an asylee, only has a temporary work permit.

Have you committed citizenship status discrimination?

Yes No

4. A Stitch in Time

You gladly hire Lily Chou because she told you how she beaded sweaters in Taiwan. You are surprised when she hands you a California driver’s license and an unrestricted Social Security card for the I-9 form. (Note: Some Social Security cards are restricted and bear the inscription “Valid Only with INS Authorization” or “Not Valid for Employment.”) “Miss Chou,” you say, “I must see a card from the INS.”

Does Lily Chou have a case against you?

Yes No

5. Hire American

You manufacture precision cast parts. Ordinarily, any one of your 12 employees knows someone who can fill an open position. You tell them unofficially that you prefer that they bring applicants who are U.S. citizens—and you fill out the I-9 form for everyone they bring.

Are you in compliance with INA?

Yes No

6. Temporary Workers

You hire Billy, John, Paul, and Sam just for a weekend to clean windows in your office building. You would have hired Ngo except that he looked too “foreign.”

Are you violating the antidiscrimination provisions?

Yes No

7. Frenchman With a Fault

Three men apply to manage the front desk of your four-star hotel. One has more experience than the other two, but you refuse to hire him because all he has for the I-9 form is an unexpired French passport with an unexpired work authorization stamp. You ask him for "a driver's license, anything." The next person has only a temporary resident card that expires in nine days. That's too close for comfort. So, you hire the third applicant, who has a valid Canadian driver's license.

Are you discriminating?

Yes No

8. Useless Regret

The person you chose to run your jacquard loom was unable to show documentation for the I-9 form. She said she would send for it, but you turned her down because you didn't want to get into as much paperwork as Martha required the last time. You hired your second choice, a woman with less experience but valid papers in hand.

Did you violate INA?

Yes No



Answers

1. Saving Time

Yes. First of all, it is recommended that you wait until you hire an individual before asking him/her for papers to verify his/her identity and work authorization. However, if you ask for papers ahead of time only from people who appear to be “foreign,” you are discriminating on the basis of national origin. You must treat all applicants equally, and, when you review their papers, you cannot insist on seeing particular documents if they have already shown you valid documents. Otherwise, you are engaging in document abuse.

2. The Cooperative Executive

Yes, you are engaging in both types of discrimination (national origin and citizenship status). When you ask new hires to fill out the I-9, you must do so for all new hires. Also, you must treat all new hires in the same way when verifying work eligibility, regardless of whether they are immigrants or members of a particular nationality.

3. On the Way Out

Yes. This is definitely citizenship status discrimination. You cannot fire a protected individual under INA because he/she has a temporary work permit as opposed to legal permanent residency. A protected individual is a U.S. citizen, national, permanent resident, temporary resident, refugee, or an asylee. In any event, your firing decision cannot be based on this factor. Otherwise, your actions will be considered discriminatory by OSC.

4. A Stitch in Time

Yes. Lily Chou has a very strong case against you. You should have let her choose which valid documents to present as proof of her identity and work authorization. A California driver’s license proves identity and a unrestricted Social Security card proves work authorization. Your insistence on seeing an INS card is called document abuse, and this is a discriminatory practice.

5. Hire American

No, you are not in compliance with INA. Unless otherwise required by law, you cannot have “citizens only” hiring policies. If you insist on doing so, you are engaging in citizenship status discrimination.

6. Temporary Workers

Yes. You cannot deny work to individuals because they looked too “foreign.” This is national origin discrimination. And, if you wrongly assumed that Ngo was unauthorized to work, you have also committed citizenship status discrimination.

7. Frenchman with a Fault

Yes, you are discriminating. The unexpired French passport, with an unexpired work authorization attached, is sufficient documentation to show that the applicant is work authorized. So is the person with the temporary resident card. When the card expires in nine days, you can ask him/her to reverify work authorization in Section 3 of the I-9 form. The third applicant did not show sufficient documents to establish work authorization. A Canadian driver's license is a permissible document to establish identity, but it does not establish authorization to work in the United States. Therefore, the applicant would also need to show you a document from List C.

Remember, for reverification purposes, the individual again has the right to show the valid documents of his/her choice. These documents don't have to be the same ones that he/she presented initially. If you insist on seeing the same documents, you are engaging in document abuse.

8. Useless Regret

Probably. Although you may choose not to allow applicants 3 days to present valid documents, you must treat all applicants equally. The paperwork requirements are the same for citizens and noncitizens alike.