

Should you make copies of employees' I-9 documentation?

When a new employee hands you a driver's license or Social Security card as a supporting document for I-9 purposes, do you make a copy and file it away? Federal law says you're allowed, but not required, to make such copies. Employment-law attorneys seem divided over whether it's a legally smart move. (Note: Some states prohibit keeping copies of certain types of supporting documentation, while a handful of other states--including Colorado and Arizona--require employers to keep copies of I-9 documentation.)

Pros: Some lawyers suggest you retain copies to protect your organization against fraud or discrimination allegations.

If you face an I-9 audit by Department of Labor (DOL) or immigration officials, keeping copies allows you to say, "I acted in good faith. Maybe this person wasn't legally authorized to work here, but the documentation he gave me looked authentic. Just look at the copy!"

Plus, you can use the copies if you later find omissions or mistakes on completed I-9s.

Cons: Some lawyers maintain that you're taking a legal risk by holding on to such copies. During an audit or lawsuit, officials may look at your copies and say, "These obviously look like fraudulent documents, and yet you accepted them anyway." Or, if you keep copies for some employees but not others, you may appear to be hiding something.

In essence, you've created legal ammunition that the feds could use against your organization.

Our advice: Keep copies of supporting I-9 documents. If you're truly reviewing documents for authenticity, the benefit you'll gain from having evidence of good-faith actions is stronger than the legal risks.

Tip: According to U.S. Citizenship and Immigration Services regulations, "The law does not require you to photocopy documents. However, if you wish to make photocopies, you should do so for all employees, and you should retain each photocopy with the Form I-9. Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of the Form I-9 nor is it an acceptable substitute for proper completion of the Form I-9 in general."

Q&A: Answers to 6 common questions about completing I-9s

1. What are the requirements for retaining I-9s?

A. Employers must retain the Form I-9 for three years after the date that the person's employment begins or one year after the date the person's employment is terminated, whichever is later. If you are an agricultural employer, you must retain Form I-9 for three years after the date employment begins for persons you recruit or

refer for a fee.

2. Do you need to fill out Form I-9 for independent contractors or their employees?

A. No. For example, if you contract with a construction company to perform renovations on your building, you do not have to complete Form I-9 for that company's employees. The construction company is responsible for completing Form I-9 for its own employees. However, you must not knowingly use contract labor to circumvent the law against hiring unauthorized aliens.

3. Can I fire an employee who fails to produce the required documents within three business days?

A. Yes. You can terminate an employee who fails to produce the required document or documents, or a receipt for a document, within three business days of the date employment begins. However, you must apply these practices uniformly to all employees.

4. What is my responsibility concerning the authenticity of documents presented to me?

A. You must examine the documents and you must accept them if they "reasonably appear on their face to be genuine and to relate to the person presenting them." To do otherwise could be an unfair immigration-related employment practice. If the documents do not reasonably appear on their face to be genuine or to relate to the person presenting them, you must not accept them.

5. May I accept a photocopy of a document presented by an employee?

A. No. Employees must present original documents. The only exception is that an employee may present a certified copy of a birth certificate.

6. What should I do if I rehire a person who previously filled out a Form I-9?

A. If the employee's Form I-9 is the version dated June 5, 2007, or a subsequent version, you rehire the person within three years of the date that the Form I-9 was originally completed, and the employee is still authorized to work, you may reverify the employee in Section 3 of the original Form I-9. If you used a version of the Form I-9 dated before June 5, 2007, when you initially verified the employee, you must complete a new Form I-9 upon rehire.

Source: [*Handbook for Employers: Instructions for Completing the Form I-9*](#), U.S. Department of Homeland Security