

# Document Abuse (Identification Documents at Work): Things You Should Know About Proving Your Work Status to Your Employer

YOUR LEGAL RIGHTS

## 1. What is document abuse?

Employers are required by the Immigration Reform and Control Act (IRCA) to verify the identity and employment eligibility of their workers. To do this, they must complete an Employment Eligibility Verification Form, also known as a “Form I-9,” within three business days after an employee is hired. This process requires employees to present the employer with any one of many possible combinations of documents that prove that they are authorized to work in the United States. As just a few examples, a worker can show a U.S. Passport (expired or unexpired), or a Permanent Resident Card (more commonly known as a Green Card), or an unexpired Employment Authorization Document with a photograph, or a state identification card together with an “unrestricted” Social Security card. The various types of documents that are acceptable are listed on the Form I-9.<sup>1</sup>

Document abuse occurs when an employer does not permit a worker to use any documents that are legally acceptable but, instead, specifies which documents s/he must use, or requires more documents than are legally required by the Form I-9. Therefore, if an employer refuses to accept legally acceptable documents that appear genuine on their face from a work-authorized immigrant worker with the intent that the worker be prevented from working until s/he has complied, the employer has committed document abuse.

## 2. Has my employer committed document abuse?

Document abuse can occur against: (1) newly-hired workers and (2) currently employed workers who have already completed the I-9 process.

### Document Abuse At the Time of Hire:

Your employer may have committed document abuse at the time of hire if –

- your employer has requested **more** documents than the I-9 form requires.
- your employer has requested **different** documents than the I-9 form requires.

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<sup>1</sup> The Department of Homeland Security has recently updated the Form I-9. It is available online at <http://www.uscis.gov/files/form/I-9.pdf> (and in Spanish at <http://www.uscis.gov/files/form/I-9Spanish.pdf>).

- your employer has refused to honor legally acceptable documents presented which on their face appear to be genuine.

*Here are some examples of document abuse at the time of hire:*

- A prospective employer demands to see a worker's U.S. passport.
- A prospective employer asks for an Employment Authorization Document although the worker has already shown a state identification card and an "unrestricted" Social Security card.
- A prospective employer refuses to accept an Employment Authorization Document because it has a future expiration date.

### **Document Abuse Against Current Employees:**

Document abuse also may occur when an employer demands that you present documents showing your ability to work in the United States, even after you have been hired and already successfully completed the I-9 process.

There are only a limited number of circumstances under which an employer can lawfully "re-verify" a worker's employment eligibility – that is, require the worker to present I-9 documents again after s/he has already done so. These situations include the following: when an employment authorization document that has been presented to complete the Form I-9 has expired or is about to expire; when the employer has been informed by Immigration and Citizenship Enforcement (ICE) that there are problems with its workers' documents; or when the employer has "constructive knowledge" that the worker is not work authorized.

"Constructive knowledge" means that employer must have *clear* evidence that someone is in fact undocumented. Mere suspicion that a worker is unauthorized to work is not enough. In fact, IRCA *strengthened* existing laws that prohibit employers from discriminating against workers based on their national origin. IMPORTANT NOTE: The receipt of a Social Security Administration "no-match" letter does *not* constitute "constructive knowledge."<sup>2</sup>

In addition, an employer may *not* re-verify your employment eligibility in many other specified situations, such as when she returns to work from an approved leave, is reinstated to her job after an unlawful suspension or termination, or in the course of a labor dispute.<sup>3</sup>

*Here are some examples of document abuse against current employees:*

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<sup>2</sup> The Department of Homeland Security had proposed to make receipt of an SSA "no-match" letter evidence of an employer's "constructive knowledge," and to require them to fire workers who were the subject of such letters within 90 days unless they could show proof of their work authorization. That proposal has been blocked by the courts, however, and it has not gone into effect.

<sup>3</sup> 8 C.F.R. § 274a.2(b)(viii)(A).

- An employer asks to re-verify the work documents of a worker who had presented a Green Card at the time of hire.
- An employer demands to see a worker's renewed driver's license because the license that the worker originally used for the I-9 has expired.
- An employer refuses to accept a worker's expired Employment Authorization Document, even when she shows the employer an official press release from U.S. Citizenship and Immigration Services stating that all such Employment Authorization Documents have been automatically extended until the following year.

### 3. What should I do if my employer has committed document abuse?

The anti-discrimination provisions of IRCA<sup>4</sup> forbid unfair immigration-related employment practices and establishes procedures to enforce these prohibitions.

If your employer has committed document abuse, you may file charges of discrimination with the U.S. Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) within 180 days of the act of discrimination. OSC may investigate claims for up to 210 days after receipt of a charge. If OSC finds there is reasonable cause to believe that immigration-related unfair employment practices may have occurred, OSC may file an administrative complaint against the employer. An administrative law judge (ALJ) hears the complaint. If OSC has not made a determination within 120 days of receipt of the charge, it must notify the parties, and the charging party then has the right to file his/her own complaint before an ALJ within the following 90 days. OSC may also initiate independent investigations to investigate whether the company has engaged in a pattern or practice of discrimination.

There are several remedies that may result from an OSC investigation. These include back pay awards, reinstatement or hiring, imposition of injunctive relief, and civil penalties against violating employers.

For more information about OSC, including obtaining charge forms in English, Spanish, Chinese, and Vietnamese, visit <http://www.usdoj.gov/crt/osc/htm/charge.htm>, call OSC's toll free Worker Hotline at 1-800-255-7688 (voice) or 1-800-237-2515 (TDD), or write to OSC at 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

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<sup>4</sup> 8 U.S.C. § 1324b.

**This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.**

For further information about your employment rights, please call:

## **The Workers' Rights Clinic**

**415-864-8208** (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.

