

Dairy Farm Employee Management: Employment Eligibility Verification – The Basics of Form I-9 Compliance

Within three days of a new employee's start date, all employers are required to complete a Form I-9 – Employment Eligibility Verification for each new employee. This is nothing new – it has been the law since 1986. But many employers – especially dairy farm employers – have questions about the correct procedures for completion and filing of this form. This article will provide a few of the basics.

The Department of Homeland Security, US Citizenship and Immigration Services (USCIS) requires that the Form I-9 be completed for every single employee, regardless of national origin, within three days after the start of employment. The Form I-9 is not to be completed during the employment selection (application or interview) phase – only at the actual beginning of employment. As stated in the USCIS M-274 Handbook for Employers: “You may not begin the Form I-9 process until you offer an individual a job and he or she accepts your offer.”

Verify that you have the most current version of the Form I-9. Just go to www.uscis.gov and click on the FORMS tab. Scroll down to the link for the Form I-9. There the employer will find sublinks for the form, detailed instructions, and the M-274 Handbook for Employers – a 69-page manual full of details and answers to questions. Print the Form I-9 and present it to the new employee any time after the acceptance of the job offer and the first day of employment. This gives the employee the opportunity to review the Lists of Acceptable Documents (List A, List B and List C).

If the employee cannot complete Section 1 without assistance or needs the Form I-9 translated, this assistance may be provided. The assistant preparer must read/translate the form to the employee, assist the employee in completing Section 1, and have the employee sign or mark the form where indicated. The assisting person must then complete the Preparer and/or Translator Certification block on Form I-9.

By or on the first day of employment on your dairy farm, the new employee should complete Section 1 of the Form I-9 and present document(s) so that the employer can complete Section 2—Employer Review and Certification.

Take heed of the notice found on both the form itself as well as the instructions – it is illegal to use the form to discriminate against individuals, and employers cannot specify which document(s) they will accept from an employee. The refusal to hire individuals because documents provided have a future expiration date may also constitute illegal discrimination.

Employees may present any one document from List A, or a combination of one document from List B plus one document

from List C. The employee must be allowed to choose which document(s) to present from the Lists of Acceptable Documents.

In completing Section 2, the employer examines the document(s) presented by the employee. Employers may only accept unexpired documents. Employers are not required to be forensic document examiners. The employer must accept any documents from the Lists of Acceptable Documents that (1) reasonably appear on their face to be genuine; and (2) appear to relate to the person presenting them. After making the document examination and completing the information requested in Section 2, the employer signs the certification.

A common question is whether the employer should make copies of documents presented by employees. There is no reason to do so, and this practice only serves to increase the burden on the employer. If the employer chooses to copy documents, this must be done for each and every employee; and then the copies must be stored with the Form I-9 documents. Since there is no purpose or advantage to making copies of documents presented, it is generally recommended to not engage in this practice.

Form I-9s are not employment records – they are an immigration law compliance form. Therefore, the Form I-9s should be filed and stored separately from other employment-related documents. One methodology for the typical dairy farm employer is to maintain two folders or three-ring binders. In the first binder, maintain the Form I-9s for all current employees. In the second binder, maintain Form I-9s for past employees – for one year after the date the former employment is terminated. To facilitate the disposal of these past-employee Form I-9s, this second binder should have twelve tabs, once for each month. When the employment is terminated, move that employee's Form I-9 from the first binder to the second binder, placing it in the section for the month of termination. When twelve months have passed since employment termination, dispose of the former employee Form I-9s. With this simple methodology, the employer always has a properly-maintained Form I-9 file on hand.

For more details and information regarding Form I-9 compliance, the best resource is the website for the US Citizen and Immigration Services – www.uscis.gov. There are instructions, handbooks, frequently-asked-questions, and more. And as always, feel free to contact me with any of your dairy farm employee management questions.