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## “Mid-Year Employment Law Review”

**July, 2017**

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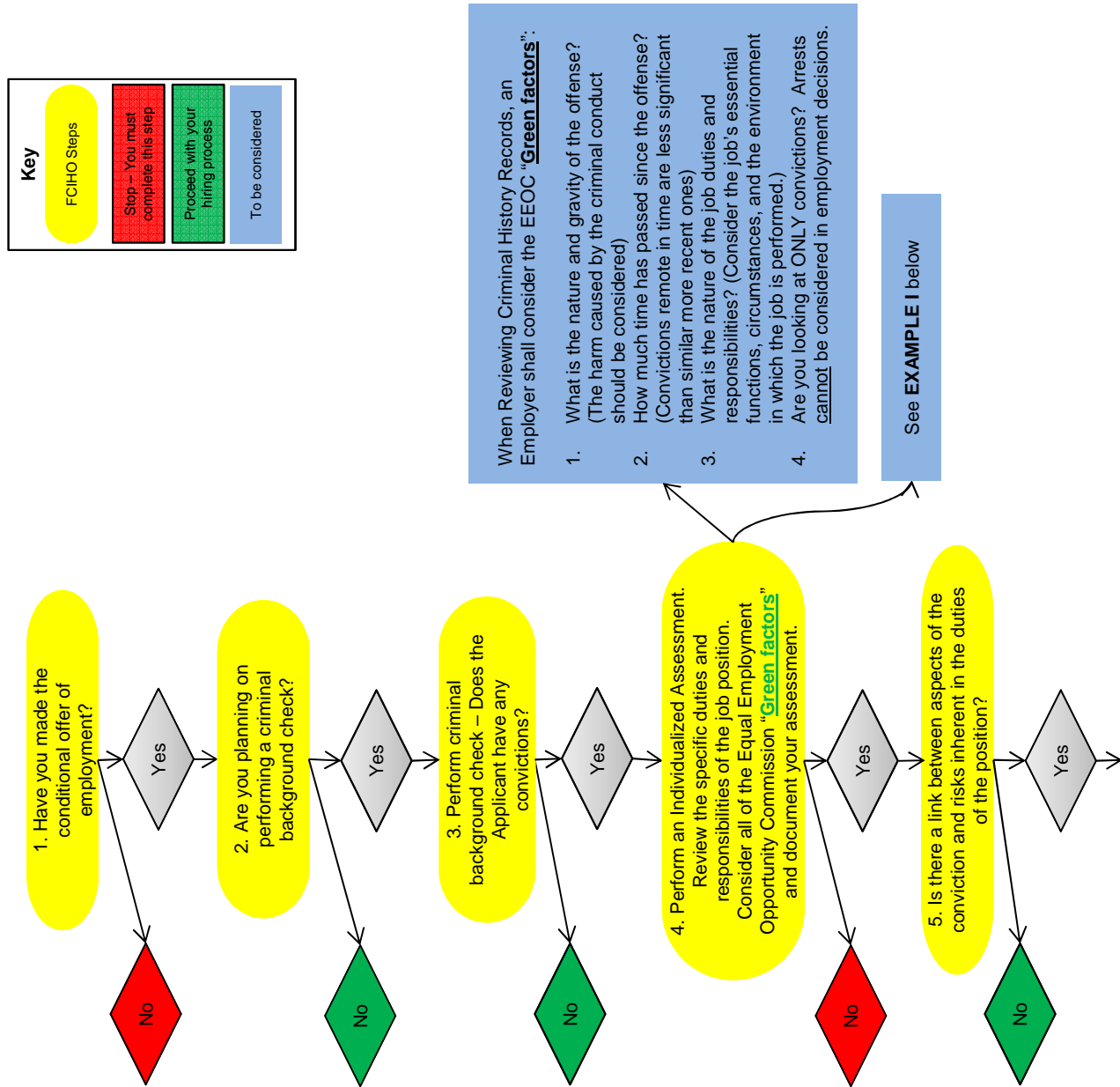


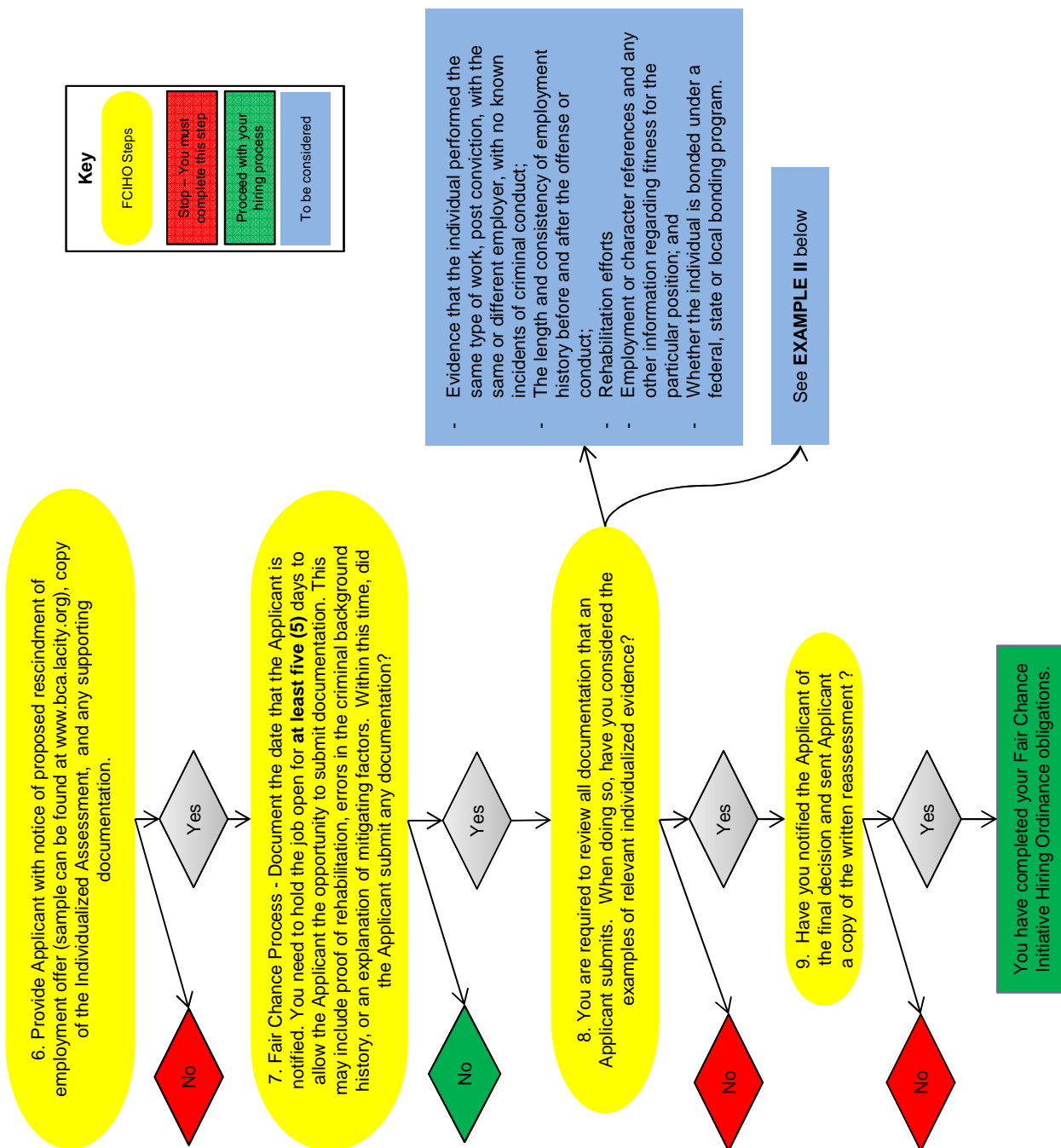
The attached material must not be considered legal advice. The sample forms and policies are for educational purposes only. We strongly recommend that you consult with legal counsel before adopting or implementing any of the attached sample forms and policies to avoid potential liability

## **Table of Contents**

Fair Chance Initiative for Hiring Ordinance Guideline for Employers .....	1-3
Minimum Wage Increases for California Los Angeles City and County .....	4
FEHA Council Regulations Regarding Transgender Identity and Expression .....	5-12
Instructions for Form I-9 .....	13-27
Employment Eligibility Verification Form .....	28-30
Rights of Victims of Domestic Violence, Sexual Assault and Stalking .....	31
California Department of Fair Employment and Housing Workplace Harassment Guide for California Employers .....	32-40

# Fair Chance Initiative for Hiring Ordinance Guideline for Employers





**EXAMPLE I - Sample Job Description for Delivery Driver**

- Required to have a CA Commercial Driver's License
- Clean Motor Vehicle Record for the past 5 years
- Make deliveries to households and businesses
  - May have access to cash
- May be required to deal with confidential information, such as debit/credit cards.

Scenario A Criminal History Record	Scenario B Criminal History Record	Scenario C Criminal History Record
11/2016 – DUI 5/2016 – DUI 2015 – DUI 2012 – Battery  Scenario A – Very recent activity shows conviction pattern that would be a liability for a job where the a majority of the job responsibilities require a clean driving record.	2014 – Check Fraud 2013 – Credit Card Fraud 2012 – Grant Theft 2011 – Petty Theft 2011 – Shoplifting  Scenario B – Conviction pattern (series of convictions that are all theft/fraud related) with fairly recent activity indicates a liability for a job that is required to handle both cash and confidential credit card information. While these are not primary functions, they are necessary components of the required responsibilities.	1999 – DUI 1996 – Reckless Driving 1992 – Simple Assault 1990 – Aggravated Trespassing 1989 – Vandalism  Scenario C – While some of the Convictions are related to the job duties, the last Conviction occurred more than 17 years ago, and there has not been noted criminal convictions in recent years.

*In Example I, Scenario C, after performing an Individual Assessment, an Employer may conclude the Applicant's clean record in recent years supports the decision to hire the Applicant.*

**EXAMPLE II – In Scenario A, the Applicant submits documentation showing:**

- Errors in Criminal History (2015 and 2016 entries) that were the result of identity theft.
- 2012 Battery charge explanation as self defense when the Applicant tried to break up a fight.
  - Character reference from volunteer organization for the past 5 years

In Example I, both Scenario A and B, the Employer could consider rescinding the offer of employment to the Applicant because of recent convictions listed on their Criminal History Report. However, in Scenario A, the Employer received documents, such as those listed in Example II. After the review of the documents, the Employer must do a reassessment to determine if the information submitted changes the outcome of the initial assessment.

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## MINIMUM WAGE INCREASES FOR CALIFORNIA LOS ANGELES CITY AND COUNTY

YEAR	FEDERAL	CALIFORNIA (effective January 1)		LOS ANGELES CITY (effective July 1)		LOS ANGELES COUNTY & UNINCORPORATED AREAS OF LOS ANGELES COUNTY (effective July 1)	
2016	\$7.25	\$10.00		<u>26 or more</u> \$10.50	<u>25 or fewer</u> \$10.00	<u>26 or more</u> \$10.50	<u>25 or fewer</u>
2017		<u>26 or more</u> \$10.50	<u>25 or fewer</u> \$10.00	\$12.00	\$10.50	\$12.00	\$10.50
2018		\$11.00	\$10.50	\$13.25	\$12.00	\$13.25	\$12.00
2019		\$12.00	\$11.00	\$14.25	\$13.25	\$14.25	\$13.25
2020		\$13.00	\$12.00	\$15.00	\$14.25	\$15.00	\$14.25
2021		\$14.00	\$13.00		\$15.00		\$15.00
2022		\$15.00	\$14.00				

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06-22-16

# **FAIR EMPLOYMENT AND HOUSING COUNCIL REGULATIONS REGARDING TRANSGENDER IDENTITY AND EXPRESSION**

## **INITIAL STATEMENT OF REASONS**

CALIFORNIA CODE OF  
REGULATIONS Title 2. Administration  
Div. 4.1. Department of Fair Employment & Housing  
Chapter 5. Fair Employment & Housing Council  
Subchapter 2. Discrimination in Employment  
Article 5. Sex Discrimination

As it relates to employment, the Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) prohibits harassment and discrimination because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, and military and/or veteran status of any person.

Pursuant to Government Code section 12935, subdivision (a), the Fair Employment and Housing Council (Council) has authority to adopt necessary regulations implementing the FEHA. This rulemaking action is intended to further implement, interpret, and/or make specific Government Code section 12900 et seq.

The specific purpose of each proposed, substantive regulation or amendment and the reason it is necessary are described below. The problem that a particular proposed regulation or amendment addresses and the intended benefits are outlined under each subdivision, as applicable, when the proposed change goes beyond mere clarification.

Throughout these regulations, the Council proposes to use gender-neutral language. While this is not a substantive change, it is logically necessary when discussing transgender individuals who may not identify as either “male” or “female”; it does not change the rights of individuals who do identify as “male” or “female.” Using gender-inclusive language is consistent with one of the objectives of the FEHA - prohibiting discrimination and harassment regardless of a person’s sex.

### **§ 11030, Definitions**

The purpose of this section is to define gender expression, gender identity, sex, sex stereotype, transgender, and transitioning within the employment context pursuant to FEHA. The Council proposes to add the definition of “transitioning” to explain the process of transitioning gender. This addition is necessary in order to provide clarity and a source of reference for the use of “transitioning” in the proposed changes to section 11034 of the regulations. Also, due to a past oversight, the Council proposes to add “gender” within the definition of “sex.” This addition is necessary to most accurately reflect the FEHA’s definition of “sex” in Government Code section 12926, subdivision (r)(2). Finally, the Council proposes to add Government Code section 12926 to the reference note, which is necessary for enhanced clarity because that section contains the definitions included in this regulation.

### **§ 11034, Terms, Conditions, and Privileges of Employment**

The purpose of this section is to address specific types of prohibited conduct as it relates to sex discrimination in compensation; fringe benefits; lines of progression; dangers to health, safety, or reproductive functions; working conditions; physical appearance, grooming, and dress standards; recording of gender and name; documentation; and transitioning.

### **§ 11034, subd. (d) Working Conditions – Dangers to Health, Safety, or Reproductive Functions.**

The Council proposes to switch the order of reasonable accommodations that employers must make when working conditions pose a greater danger to the health, safety, or reproductive functions of applicants or employees of one sex than to individuals of another sex. This is not a substantive change and is necessary to enhance clarity by putting the more common reasonable accommodation first since altering working conditions is often easier than a temporary transfer.

### **§ 11034, subd. (e)(2) Working Conditions – Equal Access to Comparable, Safe, and Adequate Facilities**

The Council proposes to elaborate upon the rule requiring equal access to facilities by clarifying that “facilities” include locker rooms, dressing rooms, dormitories, and other similar facilities in addition to restrooms; that employers shall permit employees to use facilities that correspond to the employee’s gender identity or gender expression, regardless of the employee’s assigned sex at birth; how to balance privacy interests; that transitioning employees shall not be required to undergo, or provide proof of, any particular medical treatment to use facilities designated for use by a particular gender; and that employers and other covered entities with single-occupancy facilities under their control shall use gender-neutral signage for those facilities. This proposed regulatory scheme is necessary because it is identical to federal guidance that already applies to many California employers and to school policies mandated by the Education Code and will help clarify an often misunderstood and increasingly prominent facet of the law. These subdivisions are modeled after the relevant District of Columbia Municipal Regulation (D.C. Mun. Regs. tit. 4, § 802.1 (2006)) and Colorado Regulation (3 Colo. Code Regs. § 708-1:81.9 (2014)). The legal background is as follows:

#### **1. Access to facilities consistent with one’s gender identity and expression is a protected right under the FEHA**

Government Code section 12940, subdivision (a) prohibits discrimination based on “gender identity” and “gender expression.” These express statutory provisions and the history of this legislation show that the Legislature intended to prohibit discrimination against transgender employees. The Legislature amended the FEHA to prohibit discrimination in employment and housing on the basis of sexual orientation in 1999. (Assem. Bill No. 1001 (1999-2000 Reg. Sess.)) In 2003, the Legislature expanded the definition of sex discrimination in the FEHA, Unruh Civil Rights Act, and Ralph Civil Rights Act to include discrimination on the basis of the person’s gender identity or gender related appearance and behavior. (Assem. Bill No. 196 (2003-2004 Reg. Sess.))

The Legislature amended the FEHA to expressly enumerate gender identity and gender expression as protected classes in 2011. (Assem. Bill No. 887 (2011-2012 Reg. Sess.)) The author of Assembly Bill 887 noted “[n]early 70% of transgender Californians have experienced discrimination or harassment at work.” (Assem. Com. on Judiciary, Rep. on Assem. Bill. No. 887 (2011-2012 Reg. Sess.) Mar. 29, 2011, p.3.) AB 887 was

introduced to “reduce confusion among those who bear the responsibility of ensuring that current anti-discrimination laws are enforced.” (*Id.* at 2.) AB 887 clarified the definition of gender in numerous anti-discrimination laws, including the FEHA and Education Code sections 200 and 220, to expressly include the terms “gender identity” and “gender expression” where only the term “gender” previously appeared. (*Ibid.*) Gender identity “refers to a person’s deeply felt internal sense of being male or female.” (*Id.* at 3.) Gender expression “refers to one’s behavior, mannerisms, appearance, and other characteristics that are perceived to be masculine or feminine.” (*Ibid.*)

## **2. Federal authority is consistent with the regulations and already applies to many California employers**

### **A. The EEOC has interpreted Title VII in a manner identical to the Department’s proposed guidance**

Title VII and the FEHA use similar language in an attempt to eliminate the same discriminatory conduct. (*Price v. Civil Service Com.* (1980) 26 Cal.3d 257, 271). Federal interpretations of Title VII “are unusually strong persuasive precedent” on construction of the FEHA. (*Kamen v. Lindly* (2001) 94 Cal.App.4th 197, 203.) For instance, EEOC guidelines for Title VII are a relevant source of guidance in interpreting the FEHA. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 607.)

In April 2015, the United States Equal Employment Opportunity Commission (EEOC) found that the Department of the Army discriminated against a transgender female employee in violation of Title VII when it barred her from using the restroom consistent with her female gender identity. The EEOC required the Army to permit her to use the female restroom. (*Tamra Lusardi, Complainant v. John M. McHugh, Secretary, Department of the Army*, EEOC DOC 0120133395 (April 1, 2015) 2015 WL 1607756.) Federal civil rights laws provide a floor beneath which state protections may not drop, not a ceiling above which they may not rise. (See 42 U.S.C.A. § 2000e-7 (West) (providing that a California statute requiring employers to provide leave to pregnant employees was not preempted by Title VII).) The EEOC decision in *Lusardi* thus operates as a floor for interpreting the FEHA as applied to access to facilities for transgender employees in California. This means that any California employer covered by Title VII already risks liability under federal law if it does not comply with the proposed regulations.

### **B. The United States Department of Labor has issued guidance identical to that proposed by the Council**

The Occupational Safety and Health Administration (Fed/OSHA) is an agency of the United States Department of Labor that seeks “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.” (29 U.S.C. § 651(b).) While California enacted and enforces its own occupational safety and health laws in the form of Cal/OSHA, California must provide worker protection that is at least as effective as the protection provided by Fed/OSHA. (29 C.F.R. § 1952.172(b)(1) (2012).)

In June 2015, Fed/OSHA published guidance for employers regarding restroom access

for transgender workers. The core principle is that “[a]ll employees, including transgender employees, should have access to restrooms that correspond to their gender identity.” (U.S. Dept. Labor’s Occupational Safety & Health Admin., Best Practices: A Guide to Restroom Access for Transgender Workers (June 1, 2015) p. 1, at <https://www.osha.gov/Publications/OSHA3795.pdf>. Fed/OSHA recognizes that “it is essential for employees to be able to work in a manner consistent with how they live the rest of their daily lives, based on their gender identity.” (*Ibid.*) “Restricting employees to using only restrooms that are not consistent with their gender identity . . . singles those employees out and may make them fear for their physical safety.” (*Ibid.*) Furthermore, employees should “not [be] asked to provide any medical or legal documentation of their gender identity in order to have access to gender-appropriate facilities.” (*Id.* at p. 2.) The Fed/OSHA Guide provides detailed guidance on restroom access, and the same rationale applies to access to other sanitary facilities, such as locker rooms and shower facilities.

The Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) has also determined that federal contractors must allow transgender employees access to the restroom and other facilities consistent with their gender identity. (See Office of Federal Contract Compliance Programs, Frequently Asked Questions – EO 13672 Final Rule at [http://www.dol.gov/ofccp/lgbt/lgbt\\_faqs.html#Q35](http://www.dol.gov/ofccp/lgbt/lgbt_faqs.html#Q35).)

### **3. The Education Code was amended to mandate policies in schools identical to the proposed regulations for workplaces**

In August 2013, the Legislature amended the Education Code to require schools to provide students access to facilities corresponding to their gender identity and gender expression. The amendment added section 221.5 subdivision (f), which provides, “A pupil shall be permitted to participate in sex-segregated school programs and activities, including athletic teams and competitions, and *use facilities consistent with his or her gender identity, irrespective of the gender listed on the pupil’s records.*” (Emphasis added.) (Assem. Bill No. 1266 (2013-2014 Reg. Sess.)) A review of the legislative history confirms that the purpose of the amendment was to provide specific guidance on how to apply an existing mandate of non-discrimination in sex-segregated facilities. (Sen. Floor Analyses, Rep. on Assem. Bill. No. 1266 (2013-2014 Reg. Sess.) June 13, 2013, p.5, italics added.)

The amendment to the Education Code did not change but rather clarified existing anti-discrimination law. Prior to AB 1266, both the Education Code and the FEHA prohibited discrimination based on “gender, gender identity, [and] gender expression.” (Educ. Code, § 220, Gov. Code, § 12940, subd. (a).) But the Legislature found that “many school districts d[id] not understand and are not presently in compliance with their obligations to treat transgender students the same as all other students...some school districts are excluding transgender students from sex segregated activities and facilities.” (Sen. Floor Analyses, Rep. on Assem. Bill. No. 1266 (2013-2014 Reg. Sess.) June 13, 2013, p.5.)

It is appropriate to harmonize the gender identity and gender expression protections of Education Code section 221.5, subdivision (f) and Government Code section 12940. All legislative acts having the same general purpose “should be construed together if they

harmonize and achieve a uniform and consistent legislative purpose.” (*Isobe v. Unemployment Ins. Appeals Bd.* (1974) 12 Cal. 3d 584, 590-91, internal citations omitted.) In applying this rule of construction, Courts should engage in “tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the legislature, or to discover how the policy of the legislature with reference to the subject-matter has been changed or modified from time to time. With this purpose in view therefore it is proper to consider, not only acts passed at the same session of the legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed.” (*Old Homstead Bakery v. Marsh* (1925) 75 Cal.App. 247, 258.)

Education Code section 221.5 provides that a student must be allowed to use facilities consistent with his or her gender identity. Identical protections exist in for transgender employees in the FEHA. Under settled rules of construction, the California non-discrimination statutes are to be construed together to achieve a uniform legislative purpose. If discrimination based on gender identity and gender expression is interpreted differently in the FEHA than in the Education Code, a female-to-male transgender high school student could be faced with a situation where he uses the male restroom/locker room at school, but must use the female restroom at his after-school job. Such inconsistent results are incompatible with the Legislature’s intent.

Finally, it is not uncommon for courts or the former Fair Employment & Housing Commission to look to the nondiscrimination provisions in the California Education Code when interpreting the statutes that the Department enforces, such as the Unruh Civil Rights Act (Unruh) and the FEHA. (See *Dept. Fair Empl. & Hous. v. Law School Admission Council, Inc.* (N.D. 2013) 2013 WL 1703383 (authorizing reliance on an Education Code provision to construe similar provisions of the FEHA); cf. *Dept. Fair Empl. & Hous. v. Univ. of Cal., Berkeley* (Nov. 18, 1993) No. 93-08 (1993 WL 726830 (Cal.F.E.H.C.)) (finding existence of provisions in the Education Code similar to those in FEHA did not preclude application of FEHA provisions).

#### **§ 11034, subd. (g) Physical Appearance, Grooming, and Dress Standards**

The Council proposes to reiterate that an employer or other covered entity may impose physical appearance, grooming or dress standards upon an applicant or employee that serve a legitimate business purpose, so long as any such standard does not discriminate based on an individual’s sex, gender, gender identity, or gender expression and also that it is unlawful to require individuals to dress or groom themselves in a manner inconsistent with their gender identity or gender expression. This is necessary to clarify employer’s preexisting obligations and does not alter existing law. This subdivision is modeled after the relevant District of Columbia Municipal Regulations (D.C. Mun. Regs. tit. 4, §§ 804.1 and 804.2 (2006)).

#### **§ 11034, subd. (h)(1) and (h)(2) Recording of Gender and Name – Requiring Transgender Identification**

The Council proposes to prohibit employers from requiring an applicant or employee to state whether the individual is transgender generally as well as on job applications. This is necessary to reiterate the basic premise of these regulations – employers may not discriminate based on sex, gender, gender identity, or gender expression, which includes transgender. It would violate basic notions of privacy and may constitute sexual harassment if applicants or employees were forced to state their gender and make the individuals more vulnerable to subsequent discrimination or harassment. These subdivisions are modeled after the relevant District of

Columbia Municipal Regulations (D.C. Mun. Regs. tit. 4, §§ 806.1 and 806.2 (2006)).

**§ 11034, subd. (h)(3) and (h)(4) Recording of Gender and Name – Use of a Preferred Gender, Name, and/or Pronoun and Use of Legal Name**

The Council proposes to clarify that if an employee requests to be identified with a preferred gender, name, and/or pronoun, an employer or other covered entity who fails to abide by the employee's stated preference may be liable under the FEHA. This is necessary to reaffirm that conduct, in this case the misuse of an employee's name, that is sufficiently severe or pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive may constitute sexual harassment. Also, the proposal aims to diffuse stereotyping, prevent discrimination, and provide support for individuals' choice of facilities. The EEOC applied this analytical framework in *Lusardi*, EEOC DOC 0120133395 (April 1, 2015). Similarly, the Council proposes to clarify that an employer may use a transgendered employee's gender or legal name as indicated in a government-issued identification document only if it is necessary to meet a legally-mandated obligation. This addition is necessary to maintain consistency between laws and ensure that employers' obligations are not altered by these regulations.

**§ 11034, subd. (i)(1) Additional Rights – Documentation or Proof of Sex/Gender**

The Council proposes clarifying that it is unlawful for employers and other covered entities to inquire or require documentation or proof of an individual's sex, gender, gender identity, or gender expression as a condition of employment, unless the employer or other covered entity meets its burden of proving a Bona Fide Occupational Qualification defense or the employee initiates communication with the employer regarding any requested adjustment to the employee's working conditions. This addition is necessary to demonstrate the use of the BFOQ defense in the transgender context. It is not a substantive change in the law but rather an application of existing law to a nontraditional context. This subdivision is modeled in part after the relevant District of Columbia Municipal Regulation (D.C. Mun. Regs. tit. 4, § 805.3 (2006)).

**§ 11034, subd. (i)(2) Additional Rights – Discrimination in Hiring**

The Council proposes to explicitly state that "[i]t is unlawful to deny employment to an individual based wholly or in part on the individual's gender identity or gender expression." This is not a substantive change and mirrors Government Code section 12940, subdivision (a), which contains gender identity and gender expression. This change is necessary to ensure that the regulations fully reflect the contents of the statute, in addition to interpreting it.

**§ 11034, subd. (i)(3) Additional Rights – California Family Rights Act Rights**

The Council proposes to clarify that nothing in these regulations shall prevent an applicant or employee from asserting rights under other provisions of the FEHA. This amendment would not alter existing law and is necessary to reaffirm that employees have additional rights in addition to those enumerated in these Regulations Regarding Transgender Identity and Expression, such as those provided by the California Family Rights Act and disability sections of the FEHA.

**§ 11034, subd. (i)(4) Additional Rights – Transition Discrimination**

The Council proposes to explicitly state that "[i]t is unlawful to discriminate against an individual who is transitioning or has transitioned." This is not a substantive change and implements Government Code section 12940, subdivision (a), which contains gender identity and gender expression, since transitioning can be a component of one's gender identity or gender

expression and is thus covered by the FEHA. This change is necessary to ensure that the definition of “transitioning” in section 11030 is effectuated in the broader prohibition of discrimination based on gender identity and gender expression.

### **TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Council did not rely upon any technical, theoretical or empirical studies, reports, or documents in proposing the adoption of these regulations.

### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Council has determined that no reasonable alternative it considered, or was otherwise brought to its attention, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Council invites comments from the public regarding suggested alternatives, where greater clarity or guidance is needed.

### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The proposed amendments, which clarify existing law without imposing any new burdens, will not adversely affect small businesses.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The proposed amendments describe and clarify the Fair Employment and Housing Act without imposing any new burdens. Their adoption is anticipated to benefit California businesses, workers, and the State's judiciary by clarifying and streamlining the operation of the law, making it easier for employees and employers to understand their rights and obligations and reducing litigation costs for businesses.

### **ECONOMIC IMPACT ANALYSIS/ASSESSMENT**

The Council anticipates that the adoption of these regulations will not impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State because the regulations centralize and codify existing law, clarify terms, and make technical without affecting the supply of jobs or ability to do business in California. To the contrary, adoption of the proposed amendments is anticipated to benefit California businesses, workers, and the State's judiciary by

clarifying and streamlining the operation of the law, making it easier for employees and employers to understand their rights and obligations and reducing litigation costs for businesses.



# Instructions for Form I-9, Employment Eligibility Verification

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9

OMB No. 1615-0047  
Expires 08/31/2019

**Anti-Discrimination Notice.** It is illegal to discriminate against work-authorized individuals in hiring, firing, recruitment or referral for a fee, or in the employment eligibility verification (Form I-9 and E-Verify) process based on that individual's citizenship status, immigration status or national origin. Employers **CANNOT** specify which document(s) the employee may present to establish employment authorization and identity. The employer must allow the employee to choose the documents to be presented from the Lists of Acceptable Documents, found on the last page of Form I-9. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) at 1-800-255-7688 (employees), 1-800-255-8155 (employers), or 1-800-237-2515 (TTY), or visit [www.justice.gov/crt/about/osc](http://www.justice.gov/crt/about/osc).

## What is the Purpose of This Form?

Employers must complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, to work in the United States. In the Commonwealth of the Northern Mariana Islands (CNMI), employers must complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 27, 2011.

## General Instructions

Both employers and employees are responsible for completing their respective sections of Form I-9. For the purpose of completing this form, the term “employer” means all employers, including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors, as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, Public Law 97-470 (29 U.S.C. 1802). An “employee” is a person who performs labor or services in the United States for an employer in return for wages or other remuneration. The term “Employee” does not include those who do not receive any form of remuneration (volunteers), independent contractors or those engaged in certain casual domestic employment. Form I-9 has three sections. Employees complete Section 1. Employers complete Section 2 and, when applicable, Section 3. Employers may be fined if the form is not properly completed. See 8 USC § 1324a and 8 CFR § 274a.10. Individuals may be prosecuted for knowingly and willfully entering false information on the form. Employers are responsible for retaining completed forms. **Do not mail completed forms to U.S. Citizenship and Immigration Services (USCIS) or Immigration and Customs Enforcement (ICE).**

These instructions will assist you in properly completing Form I-9. The employer must ensure that all pages of the instructions and Lists of Acceptable Documents are available, either in print or electronically, to all employees completing this form. When completing the form on a computer, the English version of the form includes specific instructions for each field and drop-down lists for universally used abbreviations and acceptable documents. To access these instructions, move the cursor over each field or click on the question mark symbol ( ? ) within the field. Employers and employees can also access this full set of instructions at any time by clicking the Instructions button at the top of each page when completing the form on a computer that is connected to the Internet.

Employers and employees may choose to complete any or all sections of the form on paper or using a computer, or a combination of both. Forms I-9 obtained from the USCIS website are not considered electronic Forms I-9 under DHS regulations and, therefore, cannot be electronically signed. Therefore, regardless of the method you used to enter information into each field, you must print a hard copy of the form, then sign and date the hard copy by hand where required.

Employers can obtain a blank copy of Form I-9 from the USCIS website at <https://www.uscis.gov/sites/default/files/files/form/i-9.pdf>. This form is in portable document format (.pdf) that is fillable and savable. That means that you may download it, or simply print out a blank copy to enter information by hand. You may also request paper Forms I-9 from USCIS.

Certain features of Form I-9 that allow for data entry on personal computers may make the form appear to be more than two pages. When using a computer, Form I-9 has been designed to print as two pages. Using more than one preparer and/or translator will add an additional page to the form, regardless of your method of completion. You are not required to print, retain or store the page containing the Lists of Acceptable Documents.

The form will also populate certain fields with N/A when certain user choices ensure that particular fields will not be completed. The Print button located at the top of each page that will print any number of pages the user selects. Also, the Start Over button located at the top of each page will clear all the fields on the form.

The Spanish version of Form I-9 does not include the additional instructions and drop-down lists described above. Employers in Puerto Rico may use either the Spanish or English version of the form. Employers outside of Puerto Rico must retain the English version of the form for their records, but may use the Spanish form as a translation tool. Additional guidance to complete the form may be found in the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) and on USCIS' Form I-9 website, [I-9 Central](#).

## Completing Section I: Employee Information and Attestation

You, the employee, must complete each field in Section 1 as described below. Newly hired employees must complete and sign Section 1 no later than the first day of employment. Section 1 should never be completed before you have accepted a job offer.

### Entering Your Employee Information

**Last Name (Family Name):** Enter your full legal last name. Your last name is your family name or surname. If you have two last names or a hyphenated last name, include both names in the Last Name field. *Examples of correctly entered last names include De La Cruz, O'Neill, Garcia Lopez, Smith-Johnson, Nguyen.* If you only have one name, enter it in this field, then enter "Unknown" in the First Name field. You may not enter "Unknown" in both the Last Name field and the First Name field.

**First Name (Given Name):** Enter your full legal first name. Your first name is your given name. *Some examples of correctly entered first names include Jessica, John-Paul, Tae Young, D'Shaun, Mai.* If you only have one name, enter it in the Last Name field, then enter "Unknown" in this field. You may not enter "Unknown" in both the First Name field and the Last Name field.

**Middle Initial:** Your middle initial is the first letter of your second given name, or the first letter of your middle name, if any. If you have more than one middle name, enter the first letter of your first middle name. If you do not have a middle name, enter N/A in this field.

**Other Last Names Used:** Provide all other last names used, if any (e.g., maiden name). Enter N/A if you have not used other last names. For example, if you legally changed your last name from Smith to Jones, you should enter the name Smith in this field.

**Address (Street Name and Number):** Enter the street name and number of the current address of your residence. If you are a border commuter from Canada or Mexico, you may enter your Canada or Mexico address in this field. If your residence does not have a physical address, enter a description of the location of your residence, such as "3 miles southwest of Anytown post office near water tower."

**Apartment:** Enter the number(s) or letter(s) that identify(ies) your apartment. If you do not live in an apartment, enter N/A.

**City or Town:** Enter your city, town or village in this field. If your residence is not located in a city, town or village, enter your county, township, reservation, etc., in this field. If you are a border commuter from Canada, enter your city and province in this field. If you are a border commuter from Mexico, enter your city and state in this field.

**State:** Enter the abbreviation of your state or territory in this field. If you are a border commuter from Canada or Mexico, enter your country abbreviation in this field.

**ZIP Code:** Enter your 5-digit ZIP code. If you are a border commuter from Canada or Mexico, enter your 5- or 6-digit postal code in this field.

**Date of Birth:** Enter your date of birth as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 1980 as 01/08/1980.

**U.S. Social Security Number:** Providing your 9-digit Social Security number is voluntary on Form I-9 unless your employer participates in E-Verify. If your employer participates in E-Verify and:

1. You have been issued a Social Security number, you must provide it in this field; or
2. You have applied for, but have not yet received a Social Security number, leave this field blank until you receive a Social Security number.

**Employee's E-mail Address (Optional):** Providing your e-mail address is optional on Form I-9, but the field cannot be left blank. To enter your e-mail address, use this format: name@site .domain. One reason Department of Homeland Security (DHS) may e-mail you is if your employer uses E-Verify and DHS learns of a potential mismatch between the information provided and the information in government records. This e-mail would contain information on how to begin to resolve the potential mismatch. You may use either your personal or work e-mail address in this field. Enter N/A if you do not enter your e-mail address.

**Employee's Telephone Number (Optional):** Providing your telephone number is optional on Form I-9, but the field cannot be left blank. If you enter your area code and telephone number, use this format: 000-000-0000. Enter N/A if you do not enter your telephone number.

### ***Attesting to Your Citizenship or Immigration Status***

You must select one box to attest to your citizenship or immigration status.

- 1. A citizen of the United States.**
- 2. A noncitizen national of the United States:** An individual born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.
- 3. A lawful permanent resident:** An individual who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. This term includes conditional residents. Asylees and refugees should not select this status, but should instead select "An Alien authorized to work" below.

If you select "lawful permanent resident," enter your 7- to 9-digit Alien Registration Number (A-Number), including the "A," or USCIS Number in the space provided. When completing this field using a computer, use the dropdown provided to indicate whether you have entered an Alien Number or a USCIS Number. At this time, the USCIS Number is the same as the A-Number without the "A" prefix.

- 4. An alien authorized to work:** An individual who is not a citizen or national of the United States, or a lawful permanent resident, but is authorized to work in the United States.

If you select this box, enter the date that your employment authorization expires, if any, in the space provided. In most cases, your employment authorization expiration date is found on the document(s) evidencing your employment authorization. Refugees, asylees and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau, and other aliens whose employment authorization does not have an expiration date should enter N/A in the Expiration Date field. In some cases, such as if you have Temporary Protected Status, your employment authorization may have been automatically extended; in these cases, you should enter the expiration date of the automatic extension in this space.

Aliens authorized to work must enter one of the following to complete Section 1:

1. Alien Registration Number (A-Number)/USCIS Number; or
2. Form I-94 Admission Number; or
3. Foreign Passport Number and the Country of Issuance

Your employer may not ask you to present the document from which you supplied this information.

**Alien Registration Number/USCIS Number:** Enter your 7- to 9-digit Alien Registration Number (A-Number), including the "A," or your USCIS Number in this field. At this time, the USCIS Number is the same as your A-Number without the "A" prefix. When completing this field using a computer, use the dropdown provided to indicate whether you have entered an Alien Number or a USCIS Number. If you do not provide an A-Number or USCIS Number, enter N/A in this field then enter either a Form I-94 Admission Number, or a Foreign Passport and Country of Issuance in the fields provided.

**Form I-94 Admission Number:** Enter your 11-digit I-94 Admission Number in this field. If you do not provide an I-94 Admission Number, enter N/A in this field, then enter either an Alien Registration Number/USCIS Number or a Foreign Passport Number and Country of Issuance in the fields provided.

**Foreign Passport Number:** Enter your Foreign Passport Number in this field. If you do not provide a Foreign Passport Number, enter N/A in this field, then enter either an Alien Number/USCIS Number or a I-94 Admission Number in the fields provided.

**Country of Issuance:** If you entered your Foreign Passport Number, enter your Foreign Passport's Country of Issuance. If you did not enter your Foreign Passport Number, enter N/A.

**Signature of Employee:** After completing Section 1, sign your name in this field. If you used a form obtained from the USCIS website, you must print the form to sign your name in this field. By signing this form, you attest under penalty of perjury (28 U.S.C. § 1746) that the information you provided, along with the citizenship or immigration status you selected, and all information and documentation you provide to your employer, is complete, true and correct, and you are aware that you may face severe penalties provided by law and may be subject to criminal prosecution for knowingly and willfully making false statements or using false documentation when completing this form. Further, falsely attesting to U.S. citizenship may subject employees to penalties, removal proceedings and may adversely affect an employee's ability to seek future immigration benefits. If you cannot sign your name, you may place a mark in this field to indicate your signature. Employees who use a preparer or translator to help them complete the form must still sign or place a mark in the Signature of Employee field on the printed form.

If you used a preparer, translator, and other individual to assist you in completing Form I-9:

- Both you and your preparer(s) and/or translator(s) must complete the appropriate areas of Section 1, and then sign Section 1. If Section 1 was completed on a form obtained from the USCIS website, the form must be printed to sign these fields. You and your preparer(s) and/or translator(s) also should review the instructions for **Completing the Preparer and/or Translator Certification** below.
- If the employee is a minor (individual under 18) who cannot present an identity document, the employee's parent or legal guardian can complete Section 1 for the employee and enter "minor under age 18" in the signature field. If Section 1 was completed on a form obtained from the USCIS website, the form must be printed to enter this information. The minor's parent or legal guardian should review the instructions for Completing the Preparer and/or Translator Certification below. Refer to the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) for more guidance on completion of Form I-9 for minors. If the minor's employer participates in E-Verify, the employee must present a list B identity document with a photograph to complete Form I-9
- If the employee is a person with a disability (who is placed in employment by a nonprofit organization, association or as part of a rehabilitation program) who cannot present an identity document, the employee's parent, legal guardian or a representative of the nonprofit organization, association or rehabilitation program can complete Section 1 for the employee and enter "Special Placement" in this field. If Section 1 was completed on a form obtained from the USCIS website, the form must be printed to enter this information. The parent, legal guardian or representative of the nonprofit organization, association or rehabilitation program completing Section 1 for the employee should review the instructions for Completing the Preparer and/or Translator Certification below. Refer to the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) for more guidance on completion of Form I-9 for certain employees with disabilities.

**Today's Date:** Enter the date you signed Section 1 in this field. Do not backdate this field. Enter the date as a 2-digit month, 2-digit day and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014. A preparer or translator who assists the employee in completing Section 1 may enter the date the employee signed or made a mark to sign Section 1 in this field. Parents or legal guardians assisting minors (individuals under age 18) and parents, legal guardians or representatives of a nonprofit organization, association or rehabilitation program assisting certain employees with disabilities must enter the date they completed Section 1 for the employee.

### ***Completing the Preparer and/or Translator Certification***

If you did not use a preparer or translator to assist you in completing Section 1, you, the employee, must check the box marked **I did not use a Preparer or Translator**. If you check this box, leave the rest of the fields in this area blank.

If one or more preparers and/or translators assist the employee in completing the form using a computer, the preparer and/or translator must check the box marked **"A preparer(s) and/or translator(s) assisted the employee in completing Section 1"**, then select the number of Certification areas needed from the dropdown provided. Any additional Certification areas generated will result in an additional page. [Form I-9 Supplement](#), Section 1 Preparer and/or Translator Certification can be separately downloaded from the USCIS Form I-9 webpage, which provides additional Certification areas for those completing Form I-9 using a computer who need more Certification areas than the 5 provided or those who are completing Form I-9 on paper. The first preparer and/or translator must complete all the fields in the Certification area on the same page the employee has signed. There is no limit to the number of preparers and/or translators an employee can use, but each additional preparer and/or translator must complete and sign a separate Certification area. Ensure the employee's last name, first name and middle initial are entered at the top of any additional pages. The employer must ensure that any additional pages are retained with the employee's completed Form I-9.

**Signature of Preparer or Translator:** Any person who helped to prepare or translate Section 1 of Form I-9 must sign his or her name in this field. If you used a form obtained from the USCIS website, you must print the form to sign your name in this field. The Preparer and/or Translator Certification must also be completed if “Individual under Age 18” or “Special Placement” is entered in lieu of the employee’s signature in Section 1.

**Today's Date:** The person who signs the Preparer and/or Translator Certification must enter the date he or she signs in this field on the printed form. Do not backdate this field. Enter the date as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014.

**Last Name (Family Name):** Enter the full legal last name of the person who helped the employee in preparing or translating Section 1 in this field. The last name is also the family name or surname. If the preparer or translator has two last names or a hyphenated last name, include both names in this field.

**First Name (Given Name):** Enter the full legal first name of the person who helped the employee in preparing or translating Section 1 in this field. The first name is also the given name.

**Address (Street Name and Number):** Enter the street name and number of the current address of the residence of the person who helped the employee in preparing or translating Section 1 in this field. Addresses for residences in Canada or Mexico may be entered in this field. If the residence does not have a physical address, enter a description of the location of the residence, such as “3 miles southwest of Anytown post office near water tower.” If the residence is an apartment, enter the apartment number in this field.

**City or Town:** Enter the city, town or village of the residence of the person who helped the employee in preparing or translating Section 1 in this field. If the residence is not located in a city, town or village, enter the name of the county, township, reservation, etc., in this field. If the residence is in Canada, enter the city and province in this field. If the residence is in Mexico, enter the city and state in this field.

**State:** Enter the abbreviation of the state, territory or country of the preparer or translator’s residence in this field.

**ZIP Code:** Enter the 5-digit ZIP code of the residence of the person who helped the employee in preparing or translating Section 1 in this field. If the preparer or translator's residence is in Canada or Mexico, enter the 5- or 6-digit postal code.

<b><i>Presenting Form I-9 Documents</i></b>
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Within 3 business days of starting work for pay, you must present to your employer documentation that establishes your identity and employment authorization. For example, if you begin employment on Monday, you must present documentation on or before Thursday of that week. However, if you were hired to work for less than 3 business days, you must present documentation no later than the end of the first day of employment.

Choose which unexpired document(s) to present to your employer from the Lists of Acceptable Documents. An employer cannot specify which document(s) you may present from the Lists of Acceptable Documents. You may present either one selection from List A or a combination of one selection from List B and one selection from List C. Some List A documents, which show both identity and employment authorization, are combination documents that must be presented together to be considered a List A document: for example, the foreign passport together with a Form I-94 containing an endorsement of the alien’s nonimmigrant status and employment authorization with a specific employer incident to such status. List B documents show identity only and List C documents show employment authorization only. If your employer participates in E-Verify and you present a List B document, the document must contain a photograph. If you present acceptable List A documentation, you should not be asked to present, nor should you provide, List B and List C documentation. If you present acceptable List B and List C documentation, you should not be asked to present, nor should you provide, List A documentation. If you are unable to present a document(s) from these lists, you may be able to present an acceptable receipt. Refer to the Receipts section below.

Your employer must review the document(s) you present to complete Form I-9. If your document(s) reasonably appears to be genuine and to relate to you, your employer must accept the documents. If your document(s) does not reasonably appear to be genuine or to relate to you, your employer must reject it and provide you with an opportunity to present other documents from the Lists of Acceptable Documents. Your employer may choose to make copies of your document(s), but must return the original(s) to you. Your employer must review your documents in your physical presence.

Your employer will complete the other parts of this form, as well as review your entries in Section 1. Your employer may ask you to correct any errors found. Your employer is responsible for ensuring all parts of Form I-9 are properly completed and is subject to penalties under federal law if the form is not completed correctly.

Minors (individuals under age 18) and certain employees with disabilities whose parent, legal guardian or representative completed Section 1 for the employee are only required to present an employment authorization document from List C. Refer to the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) for more guidance on minors and certain individuals with disabilities.

### ***Receipts***

If you do not have unexpired documentation from the Lists of Acceptable Documents, you may be able to present a receipt(s) in lieu of an acceptable document(s). New employees who choose to present a receipt(s) must do so within three business days of their first day of employment. If your employer is reverifying your employment authorization, and you choose to present a receipt for reverification, you must present the receipt by the date your employment authorization expires. Receipts are not acceptable if employment lasts fewer than three business days.

There are three types of acceptable receipts:

1. A receipt showing that you have applied to replace a document that was lost, stolen or damaged. You must present the actual document within 90 days from the date of hire or, in the case of reverification, within 90 days from the date your original employment authorization expires.
2. The arrival portion of Form I-94/I-94A containing a temporary I-551 stamp and a photograph of the individual. You must present the actual Permanent Resident Card (Form I-551) by the expiration date of the temporary I-551 stamp, or, if there is no expiration date, within 1 year from the date of admission.
3. The departure portion of Form I-94/I-94A with a refugee admission stamp. You must present an unexpired Employment Authorization Document (Form I-766) or a combination of a List B document and an unrestricted Social Security Card within 90 days from the date of hire or, in the case of reverification, within 90 days from the date your original employment authorization expires.

Receipts showing that you have applied for an initial grant of employment authorization, or for renewal of your expiring or expired employment authorization, are not acceptable.

## **Completing Section 2: Employer or Authorized Representative Review and Verification**

You, the employer, must ensure that all parts of Form I-9 are properly completed and may be subject to penalties under federal law if the form is not completed correctly. Section 1 must be completed no later than the end of the employee's first day of employment. You may not ask an individual to complete Section 1 before he or she has accepted a job offer. Before completing Section 2, you should review Section 1 to ensure the employee completed it properly. If you find any errors in Section 1, have the employee make corrections, as necessary and initial and date any corrections made.

You or your authorized representative must complete Section 2 by examining evidence of identity and employment authorization within 3 business days of the employee's first day of employment. For example, if an employee begins employment on Monday, you must review the employee's documentation and complete Section 2 on or before Thursday of that week. However, if you hire an individual for less than 3 business days, Section 2 must be completed no later than the end of the first day of employment.

## **Entering Employee Information from Section 1**

This area, titled, "Employee Info from Section 1" contains fields to enter the employee's last name, first name, middle initial exactly as he or she entered them in Section 1. This area also includes a Citizenship/Immigration Status field to enter the number of the citizenship or immigration status checkbox the employee selected in Section 1. These fields help to ensure that the two pages of an employee's Form I-9 remain together. When completing Section 2 using a computer, the number entered in the Citizenship/Immigration Status field provides drop-downs that directly relate to the employee's selected citizenship or immigration status.

## ***Entering Documents the Employee Presents***

You, the employer or authorized representative, must physically examine, in the employee's physical presence, the unexpired document(s) the employee presents from the Lists of Acceptable Documents to complete the Document fields in Section 2.

You cannot specify which document(s) an employee may present from these lists. If you discriminate in the Form I-9 process based on an individual's citizenship status, immigration status, or national origin, you may be in violation of the law and subject to sanctions such as civil penalties and be required to pay back pay to discrimination victims. A document is acceptable as long as it reasonably appears to be genuine and to relate to the person presenting it. Employees must present one selection from List A or a combination of one selection from List B and one selection from List C.

List A documents show both identity and employment authorization. Some List A documents are combination documents that must be presented together to be considered a List A document, such as a foreign passport together with a Form I-94 containing an endorsement of the alien's nonimmigrant status.

List B documents show identity only, and List C documents show employment authorization only. If an employee presents a List A document, do not ask or require the employee to present List B and List C documents, and vice versa. If an employer participates in E-Verify and the employee presents a List B document, the List B document must include a photograph.

If an employee presents a receipt for the application to replace a lost, stolen or damaged document, the employee must present the replacement document to you within 90 days of the first day of work for pay, or in the case of reverification, within 90 days of the date the employee's employment authorization expired. Enter the word "Receipt" followed by the title of the receipt in Section 2 under the list that relates to the receipt.

When your employee presents the replacement document, draw a line through the receipt, then enter the information from the new document into Section 2. Other receipts may be valid for longer or shorter periods, such as the arrival portion of Form I-94/I-94A containing a temporary I-551 stamp and a photograph of the individual, which is valid until the expiration date of the temporary I-551 stamp or, if there is no expiration date, valid for one year from the date of admission.

Ensure that each document is an unexpired, original (no photocopies, except for certified copies of birth certificates) document. Certain employees may present an expired employment authorization document, which may be considered unexpired, if the employee's employment authorization has been extended by regulation or a Federal Register Notice. Refer to the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) or I-9 Central for more guidance on these special situations.

Refer to the M-274 for guidance on how to handle special situations, such as students (who may present additional documents not specified on the Lists) and H-1B and H-2A nonimmigrants changing employers.

Minors (individuals under age 18) and certain employees with disabilities whose parent, legal guardian or representative completed Section 1 for the employee are only required to present an employment authorization document from List C. Refer to the M-274 for more guidance on minors and certain persons with disabilities. If the minor's employer participates in E-Verify, the minor employee also must present a List B identity document with a photograph to complete Form I-9.

You must return original document(s) to the employee, but may make photocopies of the document(s) reviewed. Photocopying documents is voluntary unless you participate in E-Verify. E-Verify employers are only required to photocopy certain documents. If you are an E-Verify employer who chooses to photocopy documents other than those you are required to photocopy, you should apply this policy consistently with respect to Form I-9 completion for all employees. For more information on the types of documents that an employer must photocopy if the employer uses E-Verify, visit E-Verify's website at [www.dhs.gov/e-verify](http://www.dhs.gov/e-verify). For non-E-Verify employers, if photocopies are made, they should be made consistently for ALL new hires and reverified employees.

Photocopies must be retained and presented with Form I-9 in case of an inspection by DHS or another federal government agency. You must always complete Section 2 by reviewing original documentation, even if you photocopy an employee's document(s) after reviewing the documentation. Making photocopies of an employee's document(s) cannot take the place of completing Form I-9. You are still responsible for completing and retaining Form I-9.

**List A - Identity and Employment Authorization:** If the employee presented an acceptable document(s) from List A or an acceptable receipt for a List A document, enter the document(s) information in this column. If the employee presented a List A document that consists of a combination of documents, enter information from each document in that combination in a separate area under List A as described below. All documents must be unexpired. If you enter document information in the List A column, you should not enter document information in the List B or List C columns. If you complete Section 2 using a computer, a selection in List A will fill all the fields in the Lists B and C columns with N/A.

**Document Title:** If the employee presented a document from List A, enter the title of the List A document or receipt in this field. The abbreviations provided are available in the dropdown when the form is completed on a computer. When completing the form on paper, you may choose to use these abbreviations or any other common abbreviation to enter the document title or issuing authority. If the employee presented a combination of documents, use the second and third Document Title fields as necessary.

Full name of List A Document	Abbreviations
U.S. Passport	U.S. Passport
U.S. Passport Card	U.S. Passport Card
Permanent Resident Card (Form I-551)	Perm. Resident Card (Form I-551)
Alien Registration Receipt Card (Form I-551)	Alien Reg. Receipt Card (Form I-551)
Foreign passport containing a temporary I-551 stamp	1. Foreign Passport 2. Temporary I-551 Stamp
Foreign passport containing a temporary I-551 printed notation on a machine-readable immigrant visa (MRIV)	1. Foreign Passport 2. Machine-readable immigrant visa (MRIV)
Employment Authorization Document (Form I-766)	Employment Auth. Document (Form I-766)
For a nonimmigrant alien authorized to work for a specific employer because of his or her status, a foreign passport with Form I-94/I-94A that contains an endorsement of the alien's nonimmigrant status	1. Foreign Passport, work-authorized non-immigrant 2. Form I-94/I-94A 3. "Form I-20" or "Form DS-2019"  Note: In limited circumstances, certain J-1 students may be required to present a letter from their Responsible Officer in order to work. Enter the document title, issuing authority, document number and expiration date from this document in the Additional Information field.
Passport from the Federated States of Micronesia (FSM) with Form I-94/I-94A	1. FSM Passport with Form I-94 2. Form I-94/I-94A
Passport from the Republic of the Marshall Islands (RMI) with Form I-94/I-94A	1. RMI Passport with Form I-94 2. Form I-94/I-94A
Receipt: The arrival portion of Form I-94/I-94A containing a temporary I-551 stamp and photograph	Receipt: Form I-94/I-94A w/I-551 stamp, photo
Receipt: The departure portion of Form I-94/I-94A with an unexpired refugee admission stamp	Receipt: Form I-94/I-94A w/refugee stamp
Receipt for an application to replace a lost, stolen or damaged Permanent Resident Card (Form I-551)	Receipt replacement Perm. Res. Card (Form I-551)
Receipt for an application to replace a lost, stolen or damaged Employment Authorization Document (Form I-766)	Receipt replacement EAD (Form I-766)
Receipt for an application to replace a lost, stolen or damaged foreign passport with Form I-94/I-94A that contains an endorsement of the alien's nonimmigrant status	1. Receipt: Replacement Foreign Passport, work-authorized nonimmigrant 2. Receipt: Replacement Form I-94/I-94A 3. Form I-20 or Form DS-2019, if presented
Receipt for an application to replace a lost, stolen or damaged passport from the Federated States of Micronesia with Form I-94/I-94A	1. Receipt: Replacement FSM Passport with Form I-94 2. Receipt: Replacement Form I-94/I-94A
Receipt for an application to replace a lost, stolen or damaged passport from the Republic of the Marshall Islands with Form I-94/I-94A	1. Receipt: Replacement RMI Passport with Form I-94 2. Receipt: Replacement Form I-94/I-94A

**Issuing Authority:** Enter the issuing authority of the List A document or receipt. The issuing authority is the specific entity that issued the document. If the employee presented a combination of documents, use the second and third Issuing Authority fields as necessary.

**Document Number:** Enter the document number, if any, of the List A document or receipt presented. If the document does not contain a number, enter N/A in this field. If the employee presented a combination of documents, use the second and third Document Number fields as necessary. If the document presented was a Form I-20 or DS-2019, enter the Student and Exchange Visitor Information System (SEVIS) number in the third Document Number field exactly as it appears on the Form I-20 or the DS-2019.

**Expiration Date (if any) (mm/dd/yyyy):** Enter the expiration date, if any, of the List A document. The document is not acceptable if it has already expired. If the document does not contain an expiration date, enter N/A in this field. If the document uses text rather than a date to indicate when it expires, enter the text as shown on the document, such as "D/S" (which means, "duration of status"). For a receipt, enter the expiration date of the receipt validity period as described above. If the employee presented a combination of documents, use the second and third Expiration Date fields as necessary. If the document presented was a Form I-20 or DS-2019, enter the program end date here.

**List B - Identity:** If the employee presented an acceptable document from List B or an acceptable receipt for the application to replace a lost, stolen, or destroyed List B document, enter the document information in this column. If a parent or legal guardian attested to the identity of an employee who is an [individual under age 18](#) or certain [employees with disabilities](#) in Section 1, enter either "Individual under age 18" or "Special Placement" in this field. Refer to the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#) for more guidance on individuals under age 18 and certain person with disabilities.

If you enter document information in the List B column, you must also enter document information in the List C column. If an employee presents acceptable List B and List C documents, do not ask the employees to present a List A document. No entries should be made in the List A column. If you complete Section 2 using a computer, a selection in List B will fill all the fields in the List A column with N/A.

**Document Title:** If the employee presented a document from List B, enter the title of the List B document or receipt in this field. The abbreviations provided are available in the dropdown when the form is completed on a computer. When completing the form on paper, you may choose to use these abbreviations or any other common abbreviations to document the document title or issuing authority.

Full name of List B Document	Abbreviations
Driver's license issued by a State or outlying possession of the United States	Driver's license issued by state/territory
ID card issued by a State or outlying possession of the United States	ID card issued by state/territory
ID card issued by federal, state, or local government agencies or entities	Government ID
School ID card with photograph	School ID
Voter's registration card	Voter registration card
U.S. Military card	U.S. Military card
U.S. Military draft record	U.S. Military draft record
Military dependent's ID card	Military dependent's ID card
U.S. Coast Guard Merchant Mariner Card	USCG Merchant Mariner card
Native American tribal document	Native American tribal document
Driver's license issued by a Canadian government authority	Canadian driver's license
School record (for persons under age 18 who are unable to present a document listed above)	School record (under age 18)
Report card (for persons under age 18 who are unable to present a document listed above)	Report Card (under age 18)
Clinic record (for persons under age 18 who are unable to present a document listed above)	Clinic record (under age 18)
Doctor record (for persons under age 18 who are unable to present a document listed above)	Doctor record (under age 18)
Hospital record (for persons under age 18 who are unable to present a document listed above)	Hospital record (under age 18)
Day-care record (for persons under age 18 who are unable to present a document listed above)	Day-care record (under age 18)
Nursery school record (for persons under age 18 who are unable to present a document listed above)	Nursery school record (under age 18)

Full name of List B Document	Abbreviations
Individual under age 18 endorsement by parent or guardian	Individual under Age 18
Special placement endorsement for persons with disabilities	Special Placement
Receipt for the application to replace a lost, stolen or damaged Driver's License issued by a State or outlying possession of the United States	Receipt: Replacement driver's license
Receipt for the application to replace a lost, stolen or damaged ID card issued by a State or outlying possession of the United States	Receipt: Replacement ID card
Receipt for the application to replace a lost, stolen or damaged ID card issued by federal, state, or local government agencies or entities	Receipt: Replacement Gov't ID
Receipt for the application to replace a lost, stolen or damaged School ID card with photograph	Receipt: Replacement School ID
Receipt for the application to replace a lost, stolen or damaged Voter's registration card	Receipt: Replacement Voter reg. card
Receipt for the application to replace a lost, stolen or damaged U.S. Military card	Receipt: Replacement U.S. Military card
Receipt for the application to replace a lost, stolen or damaged Military dependent's ID card	Receipt: Replacement U.S. Military dep. card
Receipt for the application to replace a lost, stolen or damaged U.S. Military draft record	Receipt: Replacement Military draft record
Receipt for the application to replace a lost, stolen or damaged U.S. Coast Guard Merchant Mariner Card	Receipt: Replacement Merchant Mariner card
Receipt for the application to replace a lost, stolen or damaged Driver's license issued by a Canadian government authority	Receipt: Replacement Canadian DL
Receipt for the application to replace a lost, stolen or damaged Native American tribal document	Receipt: Replacement Native American tribal doc
Receipt for the application to replace a lost, stolen or damaged School record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement School record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Report card (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Report card (under age 18)
Receipt for the application to replace a lost, stolen or damaged Clinic record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Clinic record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Doctor record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Doctor record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Hospital record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Hospital record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Day-care record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Day-care record (under age 18)
Receipt for the application to replace a lost, stolen or damaged Nursery school record (for persons under age 18 who are unable to present a document listed above)	Receipt: Replacement Nursery school record (under age 18)

**Issuing Authority:** Enter the issuing authority of the List B document or receipt. The issuing authority is the entity that issued the document. If the employee presented a document that is issued by a state agency, include the state as part of the issuing authority.

**Document Number:** Enter the document number, if any, of the List B document or receipt exactly as it appears on the document. If the document does not contain a number, enter N/A in this field.

**Expiration Date (if any) (mm/dd/yyyy):** Enter the expiration date, if any, of the List B document. The document is not acceptable if it has already expired. If the document does not contain an expiration date, enter N/A in this field. For a receipt, enter the expiration date of the receipt validity period as described in the Receipt section above.

**List C - Employment Authorization:** If the employee presented an acceptable document from List C, or an acceptable receipt for the application to replace a lost, stolen, or destroyed List C document, enter the document information in this column. If you enter document information in the List C column, you must also enter document information in the List B column. If an employee presents acceptable List B and List C documents, do not ask the employee to present a list A document. No entries should be made in the List A column.

**Document Title:** If the employee presented a document from List C, enter the title of the List C document or receipt in this field. The abbreviations provided are available in the dropdown when the form is completed on a computer. When completing the form on paper, you may choose to use these abbreviations or any other common abbreviations to document the document title or issuing authority. If you are completing the form on a computer, and you select an Employment authorization document issued by DHS, the field will populate with List C#8 and provide a space for you to enter a description of the documentation the employee presented. Refer to the M-274 for guidance on entering List C #8 documentation.

Full name of List C Document	Abbreviations
Social Security Account Number card without restrictions	(Unrestricted) Social Security Card
Certification of Birth Abroad (Form FS-545)	Form FS-545
Certification of Report of Birth (Form DS-1350)	Form DS-1350
Original or certified copy of a U.S. birth certificate bearing an official seal	Birth Certificate
Native American tribal document	Native American tribal document
U.S. Citizen ID Card (Form I-197)	Form I-197
Identification Card for use of Resident Citizen in the United States (Form I-179)	Form I-179
<a href="#">Employment authorization document issued by DHS (List C #8)</a>	Employment Auth. document (DHS) List C #8
Receipt for the application to replace a lost, stolen or damaged Social Security Account Number Card without restrictions	Receipt: Replacement Unrestricted SS Card
Receipt for the application to replace a lost, stolen or damaged Original or certified copy of a U.S. birth certificate bearing an official seal	Receipt: Replacement Birth Certificate
Receipt for the application to replace a lost, stolen or damaged Native American Tribal Document	Receipt: Replacement Native American Tribal Doc.
Receipt for the application to replace a lost, stolen or damaged Employment Authorization Document issued by DHS	Receipt: Replacement Employment Auth. Doc. (DHS)

**Issuing Authority:** Enter the issuing authority of the List C document or receipt. The issuing authority is the entity that issued the document.

**Document Number:** Enter the document number, if any, of the List C document or receipt exactly as it appears on the document. If the document does not contain a number, enter N/A in this field.

**Expiration Date (if any) (mm/dd/yyyy):** Enter the expiration date, if any, of the List C document. The document is not acceptable if it has already expired, unless USCIS has extended the expiration date on the document. For instance, if a conditional resident presents a Form I-797 extending his or her conditional resident status with the employee's expired Form I-551, enter the future expiration date as indicated on the Form I-797. If the document has no expiration date, enter N/A in this field. For a receipt, enter the expiration date of the receipt validity period as described in the Receipt section above.

**Additional Information:** Use this space to notate any additional information required for Form I-9 such as:

- Employment authorization extensions for Temporary Protected Status beneficiaries, F-1 OPT STEM students, CAP-GAP, H-1B and H-2A employees continuing employment with the same employer or changing employers, and other nonimmigrant categories that may receive extensions of stay
- Additional document(s) that certain nonimmigrant employees may present
- Discrepancies that E-Verify employers must notate when participating in the IMAGE program
- Employee termination dates and form retention dates
- E-Verify case number, which may also be entered in the margin or attached as a separate sheet per E-Verify requirements and your chosen business process.
- Any other comments or notations necessary for the employer's business process

You may leave this field blank if the employee's circumstances do not require additional notations.

## Entering Information in the Employer Certification

**Employee's First Day of Employment:** Enter the employee's first day of employment as a 2-digit month, 2-digit day and 4-digit year (mm/dd/yyyy).

**Signature of Employer or Authorized Representative:** Review the form for accuracy and completeness. The person who physically examines the employee's original document(s) and completes Section 2 must sign his or her name in this field. If you used a form obtained from the USCIS website, you must print the form to sign your name in this field. By signing Section 2, you attest under penalty of perjury (28 U.S.C. § 1746) that you have physically examined the documents presented by the employee, the document(s) reasonably appear to be genuine and to relate to the employee named, that to the best of your knowledge the employee is authorized to work in the United States, that the information you entered in Section 2 is complete, true and correct to the best of your knowledge, and that you are aware that you may face severe penalties provided by law and may be subject to criminal prosecution for knowingly and willfully making false statements or knowingly accepting false documentation when completing this form.

**Today's Date:** The person who signs Section 2 must enter the date he or she signed Section 2 in this field. Do not backdate this field. If you used a form obtained from the USCIS website, you must print the form to write the date in this field. Enter the date as a 2-digit month, 2-digit day and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014.

**Title of Employer or Authorized Representative:** Enter the title, position or role of the person who physically examines the employee's original document(s), completes and signs Section 2.

**Last Name of the Employer or Authorized Representative:** Enter the full legal last name of the person who physically examines the employee's original documents, completes and signs Section 2. Last name refers to family name or surname. If the person has two last names or a hyphenated last name, include both names in this field.

**First Name of the Employer or Authorized Representative:** Enter the full legal first name of the person who physically examines the employee's original documents, completes, and signs Section 2. First name refers to the given name.

**Employer's Business or Organization Name:** Enter the name of the employer's business or organization in this field.

**Employer's Business or Organization Address (Street Name and Number):** Enter an actual, physical address of the employer. If your company has multiple locations, use the most appropriate address that identifies the location of the employer. Do not provide a P.O. Box address.

**City or Town:** Enter the city or town for the employer's business or organization address. If the location is not a city or town, you may enter the name of the village, county, township, reservation, etc. that applies.

**State:** Enter the two-character abbreviation of the state for the employer's business or organization address.

**ZIP Code:** Enter the 5-digit ZIP code for the employer's business or organization address.

## Completing Section 3: Reverification and Rehires

Section 3 applies to both reverification and rehires. When completing this section, you must also complete the Last Name, First Name and Middle Initial fields in the Employee Info from Section 1 area at the top of Section 2, leaving the Citizenship/Immigration Status field blank. When completing Section 3 in either a reverification or rehire situation, if the employee's name has changed, record the new name in Block A.

### Reverification

Reverification in Section 3 must be completed prior to the earlier of:

- The expiration date, if any, of the employment authorization stated in Section 1, or
- The expiration date, if any, of the List A or List C employment authorization document recorded in Section 2 (with some exceptions listed below).

Some employees may have entered "N/A" in the expiration date field in Section 1 if they are aliens whose employment authorization does not expire, e.g. asylees, refugees, certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau. Reverification does not apply for such employees unless they choose to present evidence of employment authorization in Section 2 that contains an expiration date and requires reverification, such as Form I-766, Employment Authorization Document.

You should not reverify U.S. citizens and noncitizen nationals, or lawful permanent residents (including conditional residents) who presented a Permanent Resident Card (Form I-551). Reverification does not apply to List B documents.

For reverification, an employee must present an unexpired document(s) (or a receipt) from either List A or List C showing he or she is still authorized to work. You CANNOT require the employee to present a particular document from List A or List C. The employee is also not required to show the same type of document that he or she presented previously. See specific instructions on how to complete Section 3 below.

## Rehires

If you rehire an employee within three years from the date that the Form I-9 was previously executed, you may either rely on the employee's previously executed Form I-9 or complete a new Form I-9.

If you choose to rely on a previously completed Form I-9, follow these guidelines.

- If the employee remains employment authorized as indicated on the previously executed Form I-9, the employee does not need to provide any additional documentation. Provide in Section 3 the employee's rehire date, any name changes if applicable, and sign and date the form.
- If the previously executed Form I-9 indicates that the employee's employment authorization from Section 1 or employment authorization documentation from Section 2 that is subject to reverification has expired, then reverification of employment authorization is required in Section 3 in addition to providing the rehire date. If the previously executed Form I-9 is not the current version of the form, you must complete Section 3 on the current version of the form.
- If you already used Section 3 of the employee's previously executed Form I-9, but are rehiring the employee within three years of the original execution of Form I-9, you may complete Section 3 on a new Form I-9 and attach it to the previously executed form.

Employees rehired after three years of original execution of the Form I-9 must complete a new Form I-9.

Complete each block in Section 3 as follows:

**Block A - New Name:** If an employee who is being reverified or rehired has also changed his or her name since originally completing Section 1 of this form, complete this block with the employee's new name. Enter only the part of the name that has changed, for example: if the employee changed only his or her last name, enter the last name in the Last Name field in this Block, then enter N/A in the First Name and Middle Initial fields. If the employee has not changed his or her name, enter N/A in each field of Block A.

**Block B - Date of Rehire:** Complete this block if you are rehiring an employee within three years of the date Form I-9 was originally executed. Enter the date of rehire in this field. Enter N/A in this field if the employee is not being rehired.

**Block C -** Complete this block if you are reverifying expiring or expired employment authorization or employment authorization documentation of a current or rehired employee. Enter the information from the List A or List C document(s) (or receipt) that the employee presented to reverify his or her employment authorization. All documents must be unexpired.

**Document Title:** Enter the title of the List A or C document (or receipt) the employee has presented to show continuing employment authorization in this field.

**Document Number:** Enter the document number, if any, of the document you entered in the Document Title field exactly as it appears on the document. Enter N/A if the document does not have a number.

**Expiration Date (if any) (mm/dd/yyyy):** Enter the expiration date, if any, of the document you entered in the Document Title field as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). If the document does not contain an expiration date, enter N/A in this field.

**Signature of Employer or Authorized Representative:** The person who completes Section 3 must sign in this field. If you used a form obtained from the USCIS website, you must print Section 3 of the form to sign your name in this field. By signing Section 3, you attest under penalty of perjury (28 U.S.C. §1746) that you have examined the documents presented by the employee, that the document(s) reasonably appear to be genuine and to relate to the employee named, that to the best of your knowledge the employee is authorized to work in the United States, that the information you entered in Section 3 is complete, true and correct to the best of your knowledge, and that you are aware that you may face severe penalties provided by law and may be subject to criminal prosecution for knowingly and willfully making false statements or knowingly accepting false documentation when completing this form.

**Today's Date:** The person who completes Section 3 must enter the date Section 3 was completed and signed in this field. Do not backdate this field. If you used a form obtained from the USCIS website, you must print Section 3 of the form to enter the date in this field. Enter the date as a 2-digit month, 2-digit day, and 4-digit year (mm/dd/yyyy). For example, enter January 8, 2014 as 01/08/2014.

**Name of Employer or Authorized Representative:** The person who completed, signed and dated Section 3 must enter his or her name in this field.

### What is the Filing Fee?

There is no fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the "USCIS Privacy Act Statement" below.

### USCIS Forms and Information

For additional guidance about Form I-9, employers and employees should refer to the *Handbook for Employers: Guidance for Completing Form I-9 (M-274)* or USCIS' Form I-9 website at [www.uscis.gov/I-9Central](http://www.uscis.gov/I-9Central).

You can also obtain information about Form I-9 by e-mailing USCIS at [I-9Central@dhs.gov](mailto:I-9Central@dhs.gov), or by calling 1-888-464-4218 or 1-877-875-6028 (TTY).

You may download and obtain the English and Spanish versions of Form I-9, the *Handbook for Employers*, or the instructions to Form I-9 from the USCIS website at <https://www.uscis.gov/i-9>. To complete Form I-9 on a computer, you will need the latest version of Adobe Reader, which can be downloaded for free at <http://get.adobe.com/reader/>. You may order USCIS forms by calling our toll-free number at 1-800-870-3676. You may also obtain forms and information by contacting the USCIS National Customer Service Center at 1-800-375-5283 or 1-800-767-1833 (TTY).

Information about E-Verify, a fast, free, internet-based system that allows businesses to determine the eligibility of their employees to work in the United States, can be obtained from the USCIS website at <http://www.uscis.gov/e-verify>, by e-mailing USCIS at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov) or by calling 1-888-464-4218 or 1-877-875-6028 (TTY).

Employees with questions about Form I-9 and/or E-Verify can reach the USCIS employee hotline by calling 1-888-897-7781 or 1-877-875-6028 (TTY).

### Photocopying Blank and Completed Forms I-9 and Retaining Completed Forms I-9

Employers may photocopy or print blank Forms I-9 for future use. All pages of the instructions and Lists of Acceptable Documents must be available, either in print or electronically, to all employees completing this form. Employers must retain each employee's completed Form I-9 for as long as the individual works for the employer and for a specified period after employment has ended. Employers are required to retain the pages of the form on which the employee and employer entered data. If copies of documentation presented by the employee are made, those copies must also be retained. Once the individual's employment ends, the employer must retain this form and attachments for either 3 years after the date of hire (i.e., first day of work for pay) or 1 year after the date employment ended, whichever is later. In the case of recruiters or referrers for a fee (only applicable to those that are agricultural associations, agricultural employers, or farm labor contractors), the retention period is 3 years after the date of hire (i.e., first day of work for pay).

Forms I-9 obtained from the USCIS website that are not printed and signed manually (by hand) are not considered complete. In the event of an inspection, retaining incomplete forms may make you subject to fines and penalties associated with incomplete forms.

Employers should ensure that information employees provide on Form I-9 is used only for Form I-9 purposes. Completed Forms I-9 and all accompanying documents should be stored in a safe, secure location.

Form I-9 may be generated, signed, and retained electronically, in compliance with Department of Homeland Security regulations at 8 CFR 274a.2.

## USCIS Privacy Act Statement

**AUTHORITIES:** The authority for collecting this information is the Immigration Reform and Control Act of 1986, Public Law 99-603 (8 USC § 1324a).

**PURPOSE:** This information is collected by employers to comply with the requirements of the Immigration Reform and Control Act of 1986. This law requires that employers verify the identity and employment authorization of individuals they hire for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

**DISCLOSURE:** Providing the information collected by this form is voluntary. However an employer should not continue to employ an individual without a completed form. Failure of the employer to prepare and/or ensure proper completion of this form for each employee hired in the United States after November 6, 1986 or in the Commonwealth of the Mariana Islands after November 27, 2011, may subject the employer to civil and/or criminal penalties. In addition, employing individuals knowing that they are unauthorized to work in the United States may subject the employer to civil and/or criminal penalties.

**ROUTINE USES:** This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The employer must retain this form for the required period and make it available for inspection by authorized officials of the Department of Homeland Security, Department of Labor and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

## Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 35 minutes per response, when completing the form manually, and 26 minutes per response when using a computer to aid in completion of the form, including the time for reviewing instructions and completing and retaining the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW, Washington, DC 20529-2140; OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**



**Employment Eligibility Verification**  
**Department of Homeland Security**  
U.S. Citizenship and Immigration Services

**USCIS**  
**Form I-9**  
OMB No. 1615-0047  
Expires 08/31/2019

► **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** (*Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.*)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number [ ][ ][ ] - [ ][ ] - [ ][ ][ ][ ]		Employee's E-mail Address		Employee's Telephone Number	

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States
<input type="checkbox"/> 2. A noncitizen national of the United States ( <i>See instructions</i> )
<input type="checkbox"/> 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____
<input type="checkbox"/> 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____ Some aliens may write "N/A" in the expiration date field. ( <i>See instructions</i> )  <i>Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.</i>  1. Alien Registration Number/USCIS Number: _____ <b>OR</b> 2. Form I-94 Admission Number: _____ <b>OR</b> 3. Foreign Passport Number: _____ Country of Issuance: _____
QR Code - Section 1 Do Not Write In This Space

Signature of Employee	Today's Date (mm/dd/yyyy)
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**Preparer and/or Translator Certification (check one):**

☐ I did not use a preparer or translator. ☐ A preparer(s) and/or translator(s) assisted the employee in completing Section 1.  
(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Today's Date (mm/dd/yyyy)	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State ZIP Code



Employer Completes Next Page





**Employment Eligibility Verification**  
**Department of Homeland Security**  
U.S. Citizenship and Immigration Services

**USCIS**  
**Form I-9**  
OMB No. 1615-0047  
Expires 08/31/2019

**Section 2. Employer or Authorized Representative Review and Verification**

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

<b>Employee Info from Section 1</b>	Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
<b>List A</b> Identity and Employment Authorization	<b>OR</b>	<b>List B</b> Identity	<b>AND</b>	<b>List C</b> Employment Authorization
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date (if any)(mm/dd/yyyy)		Expiration Date (if any)(mm/dd/yyyy)		Expiration Date (if any)(mm/dd/yyyy)
Document Title		<div>Additional Information</div> <div>QR Code - Sections 2 &amp; 3 Do Not Write In This Space</div>		
Issuing Authority				
Document Number				
Expiration Date (if any)(mm/dd/yyyy)				
Document Title				
Issuing Authority				
Document Number				
Expiration Date (if any)(mm/dd/yyyy)				
Document Title				
Issuing Authority				

**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): \_\_\_\_\_ (See instructions for exemptions)

Signature of Employer or Authorized Representative		Today's Date(mm/dd/yyyy)		Title of Employer or Authorized Representative	
Last Name of Employer or Authorized Representative		First Name of Employer or Authorized Representative		Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)			City or Town	State	ZIP Code

**Section 3. Reverification and Rehires** (To be completed and signed by employer or authorized representative.)

<b>A. New Name (if applicable)</b>			<b>B. Date of Rehire (if applicable)</b>	
Last Name (Family Name)		First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)

**C.** If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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## LISTS OF ACCEPTABLE DOCUMENTS

### All documents must be UNEXPIRED

Employees may present one selection from List A  
or a combination of one selection from List B and one selection from List C.

<b>LIST A</b> <b>Documents that Establish Both Identity and Employment Authorization</b>	<b>OR</b>	<b>LIST B</b> <b>Documents that Establish Identity</b>	<b>AND</b> <b>LIST C</b> <b>Documents that Establish Employment Authorization</b>
<ol style="list-style-type: none"> <li>1. U.S. Passport or U.S. Passport Card</li> <li>2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</li> <li>3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa</li> <li>4. Employment Authorization Document that contains a photograph (Form I-766)</li> <li>5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:               <ol style="list-style-type: none"> <li>a. Foreign passport; and</li> <li>b. Form I-94 or Form I-94A that has the following:                   <ol style="list-style-type: none"> <li>(1) The same name as the passport; and</li> <li>(2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.</li> </ol> </li> </ol> </li> <li>6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI</li> </ol>		<ol style="list-style-type: none"> <li>1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address</li> <li>2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address</li> <li>3. School ID card with a photograph</li> <li>4. Voter's registration card</li> <li>5. U.S. Military card or draft record</li> <li>6. Military dependent's ID card</li> <li>7. U.S. Coast Guard Merchant Mariner Card</li> <li>8. Native American tribal document</li> <li>9. Driver's license issued by a Canadian government authority</li> <li><b>For persons under age 18 who are unable to present a document listed above:</b></li> <li>10. School record or report card</li> <li>11. Clinic, doctor, or hospital record</li> <li>12. Day-care or nursery school record</li> </ol>	<ol style="list-style-type: none"> <li>1. A Social Security Account Number card, unless the card includes one of the following restrictions:               <ol style="list-style-type: none"> <li>(1) NOT VALID FOR EMPLOYMENT</li> <li>(2) VALID FOR WORK ONLY WITH INS AUTHORIZATION</li> <li>(3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION</li> </ol> </li> <li>2. Certification of Birth Abroad issued by the Department of State (Form FS-545)</li> <li>3. Certification of Report of Birth issued by the Department of State (Form DS-1350)</li> <li>4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal</li> <li>5. Native American tribal document</li> <li>6. U.S. Citizen ID Card (Form I-197)</li> <li>7. Identification Card for Use of Resident Citizen in the United States (Form I-179)</li> <li>8. Employment authorization document issued by the Department of Homeland Security</li> </ol>

**Examples of many of these documents appear in Part 8 of the Handbook for Employers (M-274).**

**Refer to the instructions for more information about acceptable receipts.**

**EMPLOYERS MUST PROVIDE THIS INFORMATION TO NEW WORKERS  
WHEN HIRED AND TO OTHER WORKERS WHO ASK FOR IT**

**RIGHTS OF VICTIMS OF DOMESTIC VIOLENCE,  
SEXUAL ASSAULT AND STALKING**

***Your Right to Take Time Off:***

- You have the right to take time off from work to get help to protect you and your children's health, safety or welfare. You can take time off to get a restraining order or other court order.
- If your company has 25 or more workers, you can take time off from work to get medical attention or services from a domestic violence shelter, program or rape crisis center, psychological counseling, or receive safety planning related to domestic violence, sexual assault, or stalking.
- You may use available vacation, personal leave, accrued paid sick leave or compensatory time off for your leave unless you are covered by a union agreement that says something different. Even if you don't have paid leave, you still have the right to time off.
- In general, you don't have to give your employer proof to use leave for these reasons.
- If you can, you should tell your employer before you take time off. Even if you cannot tell your employer before, your employer cannot discipline you if you give proof explaining the reason for your absence within a reasonable time. Proof can be a police report, court order or doctor's or counselor's note or similar document.

***Your Right to Reasonable Accommodation:***

- You have the right to ask your employer for help or changes in your workplace to make sure you are safe at work. Your employer must work with you to see what changes can be made. Changes in the workplace may include putting in locks, changing your shift or phone number, transferring or reassigning you, or help with keeping a record of what happened to you. Your employer can ask you for a signed statement certifying that your request is for a proper purpose, and may also request proof showing your need for an accommodation. Your employer cannot tell your coworkers or anyone else about your request.

***Your Right to Be Free from Retaliation and Discrimination:***

Your employer cannot treat you differently or fire you because:

- You are a victim of domestic violence, sexual assault, or stalking.
- You asked for leave time to get help.
- You asked your employer for help or changes in the workplace to make sure you are safe at work.

***You can file a complaint with the Labor Commissioner's Office against your employer if he/she retaliates or discriminates against you.***

For more information, contact the California Labor Commissioner's Office. We can help you by phone at 213-897-6595, or you can find a local office on our website: [www.dir.ca.gov/dlse/DistrictOffices.htm](http://www.dir.ca.gov/dlse/DistrictOffices.htm). If you do not speak English, we will provide an interpreter in your language at no cost to you. This Notice explains rights contained in California Labor Code sections 230 and 230.1. Employers may use this Notice or one substantially similar in content and clarity.

## CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING WORKPLACE HARASSMENT GUIDE FOR CALIFORNIA EMPLOYERS

California law (called the Fair Employment and Housing Act or FEHA) prohibits discrimination, harassment and retaliation. The law also requires that employers “take reasonable steps to prevent and correct wrongful (harassing, discriminatory, retaliatory) behavior in the workplace (Cal. Govt. Code §12940(k)). The Department of Fair Employment and Housing (DFEH) is the state’s enforcement agency related to the obligations under the FEHA.

California’s Fair Employment and Housing Council (FEHC) enacted regulations in 2016 to clarify this obligation to prevent and correct wrongful behavior. This document was produced by the DFEH to provide further guidance to California employers.

### **WHAT DOES AN EFFECTIVE ANTI-HARASSMENT PROGRAM INCLUDE?**

- A clear and easy to understand written policy that is distributed to employees and discussed at meetings on a regular basis (for example, every six months). The regulations list the required components of an anti-harassment policy at [2 CCR §11023](#).
- Buy in from the top. This means that management is a role model of appropriate workplace behavior, understands the policies, walks the walk and talks the talk.
- Training for supervisors and managers (two-hour training is mandated under two laws commonly referred to as AB 1825 and AB 2053, for more information on this see [DFEH training FAQs](#)).
- Specialized training for complaint handlers (more information on this below).
- Policies and procedures for responding to and investigating complaints (more information on this below).
- Prompt, thorough and fair investigations of complaints (see below).
- Prompt and fair remedial action (see below).

## **IF I RECEIVE A REPORT OF HARASSMENT OR OTHER WRONGFUL BEHAVIOR, WHAT SHOULD I DO?**

You should give it top priority and determine whether the report involves behavior that is serious enough that you need to conduct a formal investigation. If it is not so serious (for example, an employee's discomfort with an offhand compliment), then you might be able to resolve the issue by counseling the individual. However, if there are allegations of conduct that, if true, would violate your rules or expectations, you will need to investigate the matter to make a factual determination about what happened. Once your investigation is complete, you should act based on your factual findings.

An investigation involves several steps and you need to consider a variety of issues before you begin your work. The following section will address many of those issues.

## **WHAT ARE THE BASIC STEPS REQUIRED TO CONDUCT A FAIR INVESTIGATION?**

A phrase that you might see related to investigations is “due process.” Due process is simply a formal way of saying “fairness” – employers should be fair to all parties during an investigation. From a practical perspective, this means:

- Conduct a thorough interview with the complaining party, preferably in person. Whenever possible, the investigation should start with this step.
- Give the accused party a chance to tell his/her side of the story, preferably in person. The accused party is entitled to know the allegations being made against him/her, however it is good investigatory process to reveal the allegations during the interview rather than before the interview takes place. It may not be necessary to disclose the identity of the complaining party in some cases. Due process does not require showing the accused party a written complaint. Rather, it means making the allegations clear and getting a clear response.
- Relevant witnesses should be interviewed and relevant documents should be reviewed. This does not mean an investigator must interview every witness or document suggested by the complainant or accused party. Rather, the investigator should exercise discretion but interview any witness whose information could impact the findings of the investigation and attempt to gather any documents that could reasonably confirm or undermine the allegations or the response to the allegations.
- Do other work that might be necessary for you to get all the facts (perhaps you need to visit the work site, view videotapes, take pictures, etc.).
- You should reach a reasonable and fair conclusion based on the information you collected, reviewed and analyzed during the investigation.

## **DO I HAVE TO KEEP ALL INFORMATION FROM AN INVESTIGATION CONFIDENTIAL?**

You need to look at confidentiality from two sides – the investigator’s and the employees’. The first question is how confidential the investigator (internal or external) will keep the information obtained; the second is whether an employer can require that employees keep information confidential.

- **Can the investigator keep the complaint confidential?**

The short answer is no. Employers can only promise *limited* confidentiality – that the information will be limited to those who “need to know.” An investigator cannot promise complete confidentiality because it may be necessary to disclose information obtained during the investigation in order to complete the investigation and take appropriate action. It is not possible to promise that a complaint can be kept entirely “confidential” for several reasons:

1. If the complaint is of potential violation of law or policy, the employer will need to investigate, and in the process of investigating it is likely that people will know or assume details about the allegations, including the identity of the person who complained. This is true even when the name of the complainant is kept confidential since allegations are often clear enough for people to figure out who complained about what.
2. The individual receiving the complaint will usually have to consult with someone else at the company about what steps to take and to collect information about whether there have been past complaints involving the same employee, etc. That means the complaint will be discussed with others within the organization.
3. The company may need to take disciplinary action. Again, while the identity of the person who brought the complaint may in some cases be kept confidential, the complaint itself cannot be.

- **Can I tell employees not to talk about the investigation?**

This is a complicated issue. Managers can, and should, be told to keep the investigation confidential. However there have been court rulings that say it is inappropriate for an employer to require that employees keep the information secret, since employees have the right to talk about their work conditions. There are exceptions to this. If you want to require confidentiality, you might want to check with an attorney about when it is appropriate and how to do so.

## **HOW QUICKLY DO I NEED TO BEGIN AND FINISH MY INVESTIGATION?**

The investigation should be started and conducted promptly, as soon as is feasible. Once begun, it should proceed and conclude quickly. However, investigators also must take the time to make sure the investigation is fair to all parties and is thorough. Some companies set up specific timelines for responding to complaints depending on how serious the allegations are (for example, if they involve claims of physical harassment or a threat of violence, act the same day as the complaint is received). If the allegation is not urgent, many companies make it a point to contact the complaining party within a day or two and strive to finish the investigation in a few weeks (although that depends on several factors, including the availability of witnesses).

A prompt investigation assists in stopping harassing behavior, sends a message that the employer takes the complaint seriously, helps ensure the preservation of evidence (including physical evidence such as emails and videos, and witnesses' memories), and allows the employer to fairly address the issues in a manner that will minimize disruption to the workplace and individuals involved.

## **WHAT ARE SOME RECOMMENDED PRACTICES FOR CONDUCTING WORKPLACE INVESTIGATIONS?**

### **IMPARTIALITY**

The investigation should be impartial. Findings should be based on objective weighing of the evidence collected. It is important for the person conducting the investigation to assess whether they have any biases that would interfere with coming to a fair and impartial finding and, if the investigator cannot be neutral, to find someone else to conduct the investigation.

Even if investigators determine they can be neutral and impartial, they must evaluate whether their involvement will create the perception of bias. A perception of bias by the investigator will discourage open dialogue with all involved parties. For example, in a case in which the investigator has a personal friendship with the complainant or accused, either actual or perceived, the investigator may need to recuse him- or herself to avoid the appearance of impropriety. It is generally a bad idea to have someone investigate a situation where either the complainant or accused party has more authority in the organization than the investigator.

### **INVESTIGATOR QUALIFICATIONS AND TRAINING**

#### **Qualifications:**

The investigator should be knowledgeable about standard investigatory practices. This includes knowledge of laws and policies relating to harassment, investigative technique relating to questioning witnesses, documenting interviews and analyzing information. He or she should have sufficient communication skills to conduct the interviews and deliver the findings in the written or verbal form. For more complex and serious allegations it is also important for the investigator to have prior experience conducting such investigations.

For workplace investigations, employers may utilize an employee as an investigator or hire an external investigator. In instances of harassment allegations, the employee investigator is often someone from human resources. In California, external investigators (those who are not employed by the employer) must be licensed private investigators or attorneys acting in their capacity as an attorney (See Business and Professions Code Section 7520 et seq.)

#### **Training:**

There is no one standard training program for workplace investigators. Internal investigators usually obtain training by professional organizations for HR professionals (such as The Society for Human Resource Management (SHRM), Northern California Human Resource Association (NCHRA), Professionals in Human Resource Association (PIHRA), professional

organizations for workplace investigators (such as the Association of Workplace Investigators - AWI) and enforcement agencies (such as DFEH or EEOC). Many law offices and vendors that provide harassment prevention training also provide training for investigators. At a minimum, training should cover information about the law shaping investigation recommended practices, how to determine scope (what to investigate), effective interviewing of witnesses, weighing credibility, analyzing information and writing a report. An introductory training program typically lasts a full day (some training is longer) and includes skill-building exercises.

## **TYPE OF QUESTIONING**

Investigations should not be interrogations. Neither the complainant nor the accused party should feel they are being cross-examined. Studies have shown that open-ended questions are better at eliciting information while not causing people to feel attacked. Investigators should ask open-ended questions on all areas relevant to the complaint to get complete information from the parties and witnesses.

## **MAKING CREDIBILITY DETERMINATIONS**

### **Making a determination:**

If there is no substantial disagreement about the factual allegations it may not be necessary to make a credibility determination. However, many investigations require a credibility determination, including the classic “he said/she said” situation, and it is up to the investigator to make this determination. An investigator can still reach a reasonable conclusion even if there is no independent witness to an event. In most cases, if the investigator gathers and analyzes all relevant information, it is possible to come to a sensible conclusion.

### **He said/she said situations:**

It is not uncommon for there to be no direct witnesses to harassment. Yet there may be other evidence that would tend to support or detract from the claim. For example, a complainant who complains about harassment may have been seen to be upset shortly after the event, or may have told someone right after the event. This would tend to bolster his or her credibility. On the other hand, it would tend to bolster the accused party’s credibility if the investigator learned that the complainant complained many months after sexual joking with a supervisor, was just given a negative performance review, and told a co-worker that he or she could use the joking against the supervisor in the future. In other cases documents such as emails or texts might bolster or reduce a witness’s credibility.

Even if there is no evidence other than the complainant’s and accused party’s respective statements, the investigator should weigh the credibility of those statements and make a finding as to who is more credible. The investigator can utilize the credibility factors stated below.

### **Credibility factors:**

Credibility factors include the following (these are also referred to in statutes and enforcement agency guidance):

1. Inherent plausibility – this refers to whether the facts put forward by the party are reasonable: whether the story holds together. In other words, ask yourself whether it is plausible that events occurred in the manner alleged.
2. Motive to lie (based on the existence of a bias, interest or other motive) – this refers to whether a party has a motive to be untruthful.
3. Corroboration – this refers to whether a direct or indirect witness corroborates some or all of the allegations or response to allegations.
4. Extent a witness was able to perceive, recollect or communicate about the matter – this refers to whether the witness could reasonably perceive the information reported (in terms of where they were, what else was happening, etc.)
5. History of honesty/dishonesty. Although investigations are not meant to make character judgments about the parties (whether they are a “good person”), if an individual is known to have been dishonest, this can weigh against his/her credibility.
6. Habit/consistency – this refers to allegations of a behavior that someone is known to do on a regular basis (such as hugging all female employees in greeting).
7. Inconsistent statements – this refers to one individual giving statements that are inconsistent in a way that is not easily explained.
8. Manner of testimony – such as hesitations of speech and indirect answers (especially when the witness has given direct answers to foundational questions.)
9. Demeanor – experts caution against using demeanor evidence as most people cannot effectively evaluate truthfulness from an individual’s demeanor. Demeanor can be used as a credibility factor, but investigators should apply it with caution and understand the pitfalls of relying on demeanor when making a finding. To the extent possible, your conclusions should be based on an analysis of the objective evidence.

### **BURDEN OF PROOF**

Investigators should make findings based on a “preponderance of the evidence” standard. This is the standard that civil courts use in discrimination and harassment cases. This standard is also called “more likely than not” – the investigator is making a finding that it more likely than not that the conduct alleged occurred, or more likely than not that it did not occur. Some workplace investigators make the mistake of applying a higher burden of proof, such as a “clear and convincing” standard or a “beyond a reasonable doubt” standard. Beyond a reasonable doubt is the standard used in criminal law, where a defendant is considered innocent until proven guilty and the consequence of guilt is a loss of freedom. Applying such a standard in a workplace investigation creates an unrealistic expectation about the level of proof needed to make a decision. Even a “clear and convincing” standard is a higher standard than should be expected since it is a higher standard than a civil court would use to determine liability. Some people describe a preponderance of the evidence standard as “fifty percent plus a feather.”

## DO NOT REACH LEGAL CONCLUSIONS

It is considered a recommended practice for investigators to reach factual conclusions, **not** legal conclusions. Sometimes, internal investigators will also reach a conclusion regarding whether behavior did or did not violate a company policy. Note that violating a workplace policy is a different standard than violating the law, which is one reason that investigators should not make legal findings. This means that even if the allegation includes concerns about, for example, unwanted touching, an investigator should only reach findings about the facts and should not reach a conclusion about whether there was unlawful (or lawful) conduct.

Conclusions should state, for example:

*Mr. Jones says his boss (Mr. Foster) made numerous sexually explicit jokes during meetings, which Mr. Foster denied. Witness interviews confirm Mr. Jones's allegations. Three witnesses recall hearing the jokes at meetings on several occasions. Therefore, a preponderance of the evidence supports a conclusion that Mr. Foster did tell sexually explicit jokes at meetings.*

Some investigators (typically internal investigators) are also expected to decide whether a policy was violated. External investigators are usually not asked to make this determination since the employer is often in a better position to interpret its own rules. In the above example, if the investigator were to make a policy violation determination the findings would also include:

*It is further found that Mr. Foster violated the company's anti-harassment policy which prohibits telling sexually-explicit jokes in the workplace.*

In the event the investigation does not uncover evidence to support the allegations, the conclusion should state that fact, such as:

*Mr. Jones's allegations against Mr. Foster are not supported by a preponderance of the evidence. This is because no witness recalls hearing the jokes described by Mr. Jones, even though they were present for the meetings in question. These witnesses appeared credible. They provided consistent information and appeared to have no bias for or against either party.*

## DOCUMENTATION

Investigators should carefully and objectively document witness interviews, the findings made and the steps taken to investigate the matter. Investigators have different methods of documenting interviews, including taking notes (handwritten or on a computer), drafting statements for witnesses to sign, obtaining witness statements (written by the witness), or audio recording. There are pros and cons to each method and any can be acceptable so long as the information gathered is reliable and thoroughly documented and the documentation is not altered. It is also advisable to be consistent in the way you decide to document your interviews (unless there is a good reason to change your usual practice). It is considered a recommended

practice to retain all documentation. Some investigators type up handwritten notes so they are legible. However, the handwritten notes should also be retained.

## **SPECIAL ISSUES**

### **What to do if the target of harassment asks the employer not to do anything.**

It is rarely appropriate for an employer to fail to take steps to look into a complaint simply because an employee asks the employer to keep the complaint confidential or says that he/she will “solve the problem” with no involvement by the company. Indeed, this is one of the primary reasons why employers should not promise “complete” confidentiality. If the complaint involves relatively minor allegations and the complainant wants to handle the situation him/herself, the complainant can be coached as to how to do so, however the employer should follow up and assure this has occurred and the harassment has stopped. If the allegations are more serious the employer will need to know if they occurred so that appropriate action can be taken. In those cases it is not acceptable to have the complainant handle the matter alone.

### **Investigating Anonymous Complaints**

Anonymous complaints should be investigated in the same manner as those with a complainant who identifies him/herself. The method will depend on the details provided in the anonymous complaint. If the complaint is sufficiently detailed the investigation may be able to proceed in the same manner as any other complaint. If the information is more general, the employer may need to do an environmental assessment\* or survey to try to determine where there may be issues. However, the fact that the complaint is anonymous is not a reason to ignore the complaint.

\* An environmental assessment is a process of finding out what is taking place in the workplace without focusing on a specific complaint or individual. For example, it might mean interviewing all the employees in a work group about how they interact, if they have experienced or witnessed any behavior that has made them uncomfortable, etc.

### **Retaliation**

Complainants and/or those who cooperate in an investigation must be protected from retaliation. Employers should tell complainants and witnesses that retaliation violates the law and their policies, should counsel all parties and witnesses not to retaliate, and should be alert to signs of retaliation. Retaliation can take many forms. In addition to the obvious, such as terminations or demotions, retaliation could take the form of changes in assignments, failing to communicate, being ostracized or the subject of gossip, etc.

Retaliation can occur at any time, not only right after an incident is reported or an investigation is started. It is good practice to check back with a complainant after an investigation is completed to ensure that the employee is not experiencing retaliation, no matter whether the allegations were determined to be correct.

## IMPLEMENTING EFFECTIVE REMEDIAL MEASURES

The FEHC regulations make it clear that an employer must take appropriate remedial steps when there is proof of *misconduct* – the behavior does not need to rise to the level of a policy violation or the law to warrant a remedy. Remember, an employer’s legal obligation is to take reasonable steps to **prevent and correct** unlawful behavior. In order to meet this obligation, an employer should:

- Stop behavior before it rises to the level of unlawful conduct, which is why steps should be taken even when the behavior is not yet serious enough to violate the law;
- Impose remedial action commensurate with the level of misconduct and that discourages or eliminates recurrence; and
- Look at what the company has done in the past in similar situations, to avoid claims of unfair (possibly discriminatory) remedial measures.

Remedial measures can include training, verbal counseling, one-on-one counseling/executive training, “last chance” agreements, demotions, salary reductions, rescinding of a bonus, terminations, or anything else that will put a stop to wrongful behavior.