

Wisconsin Human Resources Handbook

Chapter 220

Hiring Aliens and I-9 Verification

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Sec. 220.010 Introduction

Any person not a citizen or national of the United States is considered an alien. In order for an alien to accept employment in the United States, he or she must be in possession of documentation issued by the United States Citizenship and Immigration Services (USCIS), which authorizes employment.

The purpose of this handbook chapter is to provide guidance to agency human resources staff when verifying employment eligibility. The chapter includes the Department of Administration, Division of Personnel Management (DOA/DPM) policy on the employment of aliens, instructions for agencies to follow in order to verify the identity and employment eligibility of employees, and relevant USCIS resources and forms.

NOTE: The Wisconsin USCIS office is located at 310 East Knapp Street, Milwaukee, Wisconsin, 53202, telephone number (800) 375-5283. The federal USCIS website is located at <http://www.uscis.gov>.

Sec. 220.020 Statutory and Rule Authority

There is no statutory or rule authority related to the hiring of aliens in Chapter 230, Wis. Stats., or ER-MRS Chapters of the Wis. Adm. Code. The federal Immigration Reform and Control Act of 1986 (IRCA), which is administered by the USCIS, requires all employers to verify the identity and employment eligibility of employees who are hired on or after November 7, 1986. This handbook chapter provides general guidance and resources to state agencies when verifying employment eligibility; however, the primary source for current information and procedures related to employment verification is the USCIS.

Sec. 220.030 Policy Statement

In accordance with the federal IRCA, it is the policy of the State of Wisconsin as an employer to employ, or continue to employ, only persons who are authorized to work in the United States. This policy applies to all permanent civil service, limited-term, seasonal, full-time, and part-time employees of all state agencies, the Legislature, the Executive Branch, the State Supreme Court, and any state governmental authorities which employ classified and/or unclassified civil service employees. It is also DOA/DPM's policy to rely on agency human resources staff to contact the USCIS when questions arise about hiring aliens.

In keeping with the State of Wisconsin policy of equal opportunity, appointing authorities shall not refuse to hire aliens based on their foreign appearance, accent, language, name, national origin, citizenship, or intended U.S. citizenship.

Sec. 220.040 Definitions

The following definitions (and others) can be found in the USCIS *Glossary*, which can be accessed at the USCIS using the main website link. (See Attachment.) See other sections of the USCIS *Glossary* for definitions of Exchange Visitor, Intracompany Transferee, and U.S.-Canada or North American Free-Trade Agreement classes of nonimmigrant admission.

1. **Alien:** “Any person not a citizen or national of the United States. ‘Foreign national’ is a synonym and used outside of statutes when referring to noncitizens of the U.S.”
2. **Asylee:** “A foreign national in the United States or at a port of entry who is unable or unwilling to return to his or her country of nationality, or to seek the protection of that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on religion, nationality, membership in a particular social group or political opinion.”
3. **Cuban/Haitian Entrant:** “Status accorded 1) Cubans who entered illegally or were paroled into the United States between April 15, 1980, and October 10, 1980, and 2) Haitians who entered illegally or were paroled into the country before January 1, 1981. Cubans and Haitians meeting these criteria who have continuously resided in the United States since before January 1, 1982, and who were known to the USCIS before that date, may adjust to permanent residence under a provision of the Immigration Control and Reform Act of 1986.”
4. **Immigrant:** “See Permanent Resident Alien.”
5. **Nonimmigrant:** “An alien who seeks temporary entry to the United States for a specific purpose. The alien must have a permanent residence abroad (for most classes of admission) and qualify for the nonimmigrant classification sought. The nonimmigrant classifications include: foreign government officials, visitors for business and for pleasure, aliens in transit through the United States, treaty traders and investors, students, international representatives, temporary workers and trainees, representatives of foreign information media, exchange visitors, fiancé(e)s of U.S. citizens, intracompany transferees, NATO officials, religious workers, and some others. Most nonimmigrants can be accompanied or joined by spouses and unmarried minor (or dependent) children.”
6. **Parolee:** “A parolee is an alien, appearing to be inadmissible to the inspecting officer [of the USCIS], allowed into the United States for urgent humanitarian reasons or when that alien’s entry is determined to be for significant public benefit. Parole does not constitute a formal admission to the United States and confers temporary status only, requiring parolees to leave when the conditions supporting their parole cease to exist. Types of parolees include:
 - 1) *Deferred inspection:* authorized at the port upon alien’s arrival; may be conferred by an immigration inspector when aliens appear at a port of entry with documentation, but after preliminary examination, some question remains about their admissibility which can best be answered at their point of destination.
 - 2) *Advance parole:* authorized at a USCIS District office in advance of alien’s arrival; may be issued to aliens residing in the United States in other than lawful permanent resident status who have an unexpected need to travel and return, and whose conditions of stay do not otherwise allow for readmission to the United States if they depart.

- 3) *Port-of-entry parole*: authorized at the port upon alien's arrival; applies to a wide variety of situations and is used at the discretion of the supervisory immigration inspector, usually to allow short periods of entry. Examples include allowing aliens who could not be issued the necessary documentation within the required time period, or who were otherwise inadmissible, to attend a funeral and permitting the entry of emergency workers, such as fire fighters, to assist with an emergency.
- 4) *Humanitarian parole*: authorized at USCIS headquarters or overseas District Offices for 'urgent humanitarian reasons' specified in the law. It is used in cases of medical emergency and comparable situations.
- 5) *Significant Public Benefit Parole*: authorized at USCIS headquarters **Office of International Affairs** for "significant public benefit" specified in the law. It is generally used for aliens who enter to take part in legal proceedings when there is a benefit to the government. **These requests must be submitted by a law enforcement agency.**
- 6) *Overseas parole*: authorized at a USCIS district or suboffice while the alien is still overseas; designed to constitute long-term admission to the United States. In recent years, most of the aliens the USCIS has processed through overseas parole have arrived under special legislation or international migration agreements."
7. **Permanent Resident Alien**: "[A]n alien admitted to the United States as a lawful permanent resident. Permanent residents are also commonly referred to as immigrants; however, the Immigration and Nationality Act (INA) broadly defines an immigrant as any alien in the United States, except one legally admitted under specific nonimmigrant categories (INA section 101(a)(15)). An illegal alien who entered the United States without inspection, for example, would be strictly defined as an immigrant under the INA but is not a permanent resident alien. Lawful permanent residents are legally accorded the privilege of residing permanently in the United States. They may be issued immigrant visas by the Department of State overseas or adjusted to permanent resident status by the Immigration and Naturalization Service in the United States."
8. **Refugee**: "Any person who is outside of his or her country of nationality who is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution. Persecution or the fear thereof must be based on the alien's race, religion, nationality, membership in a particular social group, or political opinion. People with no nationality must generally be outside their country of last habitual residence to qualify as a refugee. Refugees . . . are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States."
9. **Temporary Worker**: "An alien coming to the United States to work for a temporary period of time. The Immigration Reform and Control Act of 1986 and the Immigration Act of 1990, as well as other legislation, revised existing classes and created new classes of nonimmigrant admission. Nonimmigrant temporary worker classes of admission are as follows:
 - 1) H-1A – registered nurses (valid from 10/1/1990 through 9/30/1995);
 - 2) H-1B – workers with 'specialty occupations' admitted on the basis of professional education, skills, and/or equivalent experience;
 - 3) H-1C – registered nurses to work in areas with a shortage of health professionals under the Nursing Relief for Disadvantaged Areas Act of 1999;
 - 4) H-2A – temporary agricultural workers coming to the United States to perform agricultural services or labor of a temporary or seasonal nature when authorized workers are unavailable in the United States;

- 5) H-2B – temporary non-agricultural workers coming to the United States to perform temporary services or labor if unemployed persons capable of performing the service or labor cannot be found in the United States;
- 6) H-3 – aliens coming temporarily to the United States as trainees, other than to receive graduate medical education or training;
- 7) O-1, O-2, O-3 – temporary workers with extraordinary ability or achievement in the sciences, arts, education, business, or athletics; those entering solely for the purpose of accompanying and assisting such workers; and their spouses and children;
- 8) P-1, P-2, P-3, P-4 – athletes and entertainers at an internationally recognized level of performance; artists and entertainers under a reciprocal exchange program; artists and entertainers under a program that is ‘culturally unique’; and their spouses and children;
- 9) Q-1, Q-2, Q-3 – participants in international cultural exchange programs; participants in the Irish Peace Process Cultural and Training Program; and spouses and children of Irish Peace Process participants;
- 10) R-1, R-2 – temporary workers to perform work in religious occupations and their spouses and children.

Sec. 220.050 Aliens and Wisconsin Residency Requirements

In order to be appointed to a limited-term or project/project position, an alien must be a Wisconsin resident. For those aliens appointed to a permanent position, Wisconsin residency is not required. (See DER bulletin OS-74 & MRS-188 implementing 1997 Wisconsin Act 307, which repealed the Wisconsin residency requirement for permanent classified positions at http://doa.wi.gov/asp/bulletins/bulletin_get.asp?bid=26.)

Sec. 220.060 Employment Eligibility Verification—Form I-9

BMRS neither encourages or discourages agencies from sponsoring or seeking work authorization for an alien. The responsibility of BMRS is to provide general information and identify federal resources, relying on agencies to obtain employment authorization, following USCIS procedures.

Form I-9: Form I-9 is the document used to verify an individual’s identity and employment eligibility. Both the employee and the appointing authority complete Form I-9—the employee completes section 1 at the time of hire (generally, the time of an accepted job offer), and the appointing authority completes section 2 within three business days of the date employment begins. Please see the USCIS *Handbook for Employers, Instructions for Completing Form I-9* at <http://www.uscis.gov/files/form/m-274.pdf>. The USCIS *Handbook for Employers, Instructions for Completing Form I-9* explains the responsibilities in the hiring and verification process and provides a step-by-step explanation of what the appointing authority must do to meet his or her responsibilities under the law.

All employees hired as an original appointment must be verified. Employees verified on original appointment need not be asked to verify their eligibility again, if they transfer, demote, promote, or reassign within the same or different employing unit or state agency, regardless of geographic location.

Employees whose initial employment eligibility verification shows that their work authorization is temporary must be scheduled for an update to take place on the date of expiration. It is the responsibility of the agency to reverify an employee’s eligibility to continue to work on or before the expiration date.

NOTE: While agencies are encouraged to be cautious when filling permanent positions with individuals whose work authorization is temporary due to the possibility that the USCIS may not extend employment authorization,

agencies should be aware that refusal to hire an individual because of a future expiration date may constitute illegal discrimination.

Sec. 220.070 Removal of Ineligible Aliens from Certification List and Register

In the event an alien completes a competitive assessment and is placed on a register, is certified, and is found to be ineligible to work in the United States at the time of hire, the appointing authority shall request that the Director of BMRS remove the individual from the certification list and the register. (See s. ER-MRS 6.10, Wis. Adm. Code.)

Sec. 220.080 Administrative Information

This *Wisconsin Human Resources Handbook* chapter was issued in April 2002 as a replacement of the Department of Employment Relations Bulletin OS-41 & MRS-61, dated June 18, 1987.

This chapter was modified in January 2003 to include additional information provided by the Immigration and Naturalization Service updating the list of authorized documents used to verify employment eligibility. Bulletin MRS-230, dated December 19, 2002, is now obsolete.

In January 2008, the chapter was reviewed and modified to reflect the March 2003 transition of the former Immigration and Naturalization Service (U.S. Department of Justice) into the U.S. Citizenship and Immigration Services (USCIS) (U.S. Department of Homeland Security) and include changes made to the Form I-9 in 2007. Links to the USCIS website were updated. Additionally, section 220.050: "Alien Identification and Employment Rights" was removed.

In March 2013 a link to the 2007 I-9 Form was removed from section 220.060. Current information about I-9 form was added to the Attachment to the chapter.

In July 2016, Chapter 220 underwent a review and update pursuant to changes introduced by 2015 Wisconsin Act 55 and by 2015 Wisconsin Act 150. In July 2015, the Office of State Employment Relations was eliminated and the functions were transferred into the newly created Department of Administration, Division of Personnel Management. This chapter was updated to reflect the changes in terminology that resulted from the organizational restructuring.

In August 2018, minor updates were made to the definitions section and to add current information about I-9 form to the Attachment to the chapter.

LINKS

U.S. Citizenship and Immigration Services

<http://www.uscis.gov/portal/site/uscis>

Employment Eligibility Verification Form I-9

On July 17, 2017, USCIS released a new [Employment Eligibility Verification Form I-9](#). Employers should begin using the new Form I-9 with revision date 07/17/2017 immediately for all hires. The revision date is on the lower left of the new form and as of 09/18/17, employers must only use the new Form I-9 (07/17/2017 N). The previous versions dated 11/14/2016 should no longer be used. For more information, please refer to the [executive summary](#) prepared and released by the USCIS. You may obtain the new Form I-9 (07/17/2017 N) by visiting [I-9 Central](#) or the [USCIS website](#).

Here are some of the changes to the I-9:

- The I-9 instructions now state that Section 1 of the form must be completed “no later than the employee’s first day of employment.” Previous instructions noted this section had to be completed by “the end of” the first day.
- The list of acceptable documents on page three has been slightly revised. The List C now indicates that a document evidencing the birth abroad of an employee, including Certificate of Report of Birth (Forms DS-1350 and FS-545) and the Consular Report of Birth Abroad (Form FS-240), is acceptable to establish employment authorization

Employers are required to complete Form I-9 for all newly-hired employees to verify their identity and authorization to work in the United States.

Handbook for Employers Instructions for Completing the Form I-9

<https://www.uscis.gov/i-9-central/handbook-employers-m-274>

The Handbook for Employers: Guidance for Completing Form I-9 (Form M-274) was also updated in July 2017. It provides useful information on completing the I-9, retention requirements, unlawful discrimination and prohibited practices, and use of the E-Verify system.