

Sorting Out Immigration Questions

QUESTION: I am a senior partner of an accounting company, and at my recommendation the firm recently hired my neighbor's daughter, who just graduated from college. I informed the Human Resources staff that I've lived next door to our new accountant since she was born, so it is not necessary to ask her for proof of citizenship as we do for other new hires.

The HR manager told me that she must ask the new employee for the information even though I know she grew up here in the U.S., because the federal law requires employers to fill out I-9 forms on all employees regardless of whether they are known to other employees. It seems like HR is on a bit of a power trip, and I'm a bit embarrassed because, as a senior partner, I think I should have some influence on helping my neighbor's daughter cut past this formality. Why are they being so picky about this?

ANSWER: The Immigration and Nationality Act (INA), as amended by the Immigration Reform and Control Act of 1986 (IRCA), requires employers to check identification and work eligibility documents and complete an Employment Eligibility Verification Form (an I-9) on anyone hired after November 6, 1986.

The I-9 form lists several kinds of documents (such as passports, alien registration cards, driver's licenses and social security cards) that an employee can present to show that he or she is legally authorized to work in the United States. An employer who fails to comply with I-9 requirements is subject to sanctions. In order to ensure that all employees are treated equally, there is no exception to the employer's obligation to fill out an I-9 form for each employee, even if the employer has first hand knowledge that the employee is a U.S. citizen or is legally authorized to work in the U.S.

So, your HR colleagues are not being unnecessarily inflexible in insisting that your long-term neighbor, just like all other incoming employees, is subject to the Form I-9 requirements -- despite the fact that you have known her since she was in diapers.

QUESTION: The other day I interviewed a job applicant who informed me she is from Puerto Rico, so during the interview I asked to see her "green card" in order to make sure she can legally work here in the United States if we decide to hire her. One of the other interviewers later informed me that I should not have done this. Why not?

ANSWER: There are three major reasons why you should not have asked to see the "green card" of the woman you were interviewing. The Immigration Reform and Control Act (IRCA), as well as state and federal anti-discrimination laws, prohibit employers from discriminating against applicants (as well as employees in all aspects of employment) on the basis of nationality or citizenship status.

First, employers must treat all applicants equally when obtaining I-9 information. Requesting green cards or other immigration status documentation from select applicants

- only those with an accent, for example - is not a sound practice, as it discriminates against individuals based on national origin and citizenship status.

Second, employers may not ask to see specific documents listed by the I-9, and should not ask for more documents than those required by the I-9 form. Acceptable documentation (which includes options for the employee comprised of one document or a combination of two other types of documents) is listed on the back of the I-9 form. Employers should accept any valid documents presented by an employee that appear to be genuine.

Finally, individuals born in Puerto Rico are U.S. citizens. As such, individuals born there who move to Oregon are no different from an immigration perspective than those born in one state who later move to a different one. U.S. citizenship also belongs to all individuals born in Guam, the Virgin Islands, Northern Mariana Islands, American Samoa, and Swains Island. Assuming the applicant was born in Puerto Rico, she is a U.S. citizen and therefore does not need a green card to work for you or any other U.S. employer.

Additional information about IRCA may be obtained from the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 (voice), 1-800-237-2515 (TTY for employees/applicants) or 1-800-362-2735 (TTY for employers) or at <http://www.usdoj.gov/crt/osc>.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by Boli's Technical Assistance Unit, visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.