



**U.S. Department of Justice**

**Civil Rights Division**

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*Office of Special Counsel for Immigration Related  
Unfair Employment Practices - NYA  
950 Pennsylvania Avenue, NW  
Washington, DC 20530*

**Via Email:**

Email: [Melissa.K.DeGuia@BakerNet.com](mailto:Melissa.K.DeGuia@BakerNet.com)

June 10, 2010

Melissa K. De Guia, Esq.  
Associate  
Baker & McKenzie LLP  
One Prudential Plaza, Suite 3000  
130 East Randolph Drive  
Chicago, IL 60601

Dear Ms. De Guia:

Thank you for your email, dated November 23, 2009. We apologize for the delay in our response. In your correspondence, you state that the Immigration and Nationality Act (INA) makes no reference as to whether the Form I-9 should be maintained in an employee's file. Furthermore, you ask whether it is advisable to do so, and if the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) has ever issued a directive to separate the Form I-9 from the employee's file.

This office cannot give you an advisory opinion on any set of facts involving a particular individual or company. However, we can provide some general guidelines regarding compliance with the anti-discrimination provision of the INA.

The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) in the Civil Rights Division of the U.S. Department of Justice investigates and prosecutes employers charged with national origin and citizenship status discrimination, as well as over-documentation in the employment eligibility verification process ("document abuse") and retaliation under the antidiscrimination provision of the INA, 8 U.S.C. § 1324b. Congress created OSC because of concern that making employers subject to civil and criminal sanctions for knowingly hiring individuals unauthorized to work in the United States might result in discrimination, either against those who look or sound "foreign" or those who are not U.S. citizens. For more information about OSC, please visit our website at <http://www.justice.gov/crt/osc>.

OSC has not issued guidance advising whether an employer should separate Forms I-9 from employee files. However, the three agencies that are authorized to inspect I-9 Forms - the Department of Homeland Security (DHS), OSC and the U.S. Department of Labor - may provide an employer with only three days' notice prior to inspecting Forms I-9, and employers who refuse or delay an inspection will be in violation of DHS retention requirements. *See* 8 C.F.R. § 274a.2. Thus, an employer may prefer to file an employee's I-9 form in a way that makes it easy to retrieve.

For more information regarding the retention of Forms I-9 you may call the U.S. Citizenship and Immigration Services (USCIS) customer service hotline at 1-800-375-5283, or you may visit the USCIS website at [www.uscis.gov](http://www.uscis.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine A. Baldwin", written over the printed name.

Katherine A. Baldwin  
Deputy Special Counsel