



U.S. Department of Justice

Civil Rights Division

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

**MAR 24 2010**

Victoria Donoghue  
Nachman & Associates  
VISASERVE PLAZA  
487 Goffle Road  
Ridgewood, NJ 07450

Dear Ms. Donoghue:

This letter responds to your e-mail received by the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) on February 1, 2010. Your email poses questions about when the Employment Eligibility Verification Form I-9 (Form I-9) can be completed. Specifically you ask whether some components of a large employer can complete the Form I-9 on the first day of work while others complete the Form I-9 before the first day of work.

As you may know, OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. §1324b. The anti-discrimination provision prohibits four types of unlawful conduct: (1) citizenship or immigration status discrimination; (2) national origin discrimination; (3) unfair documentary practices during the employment eligibility verification (Form I-9) process ("document abuse"); and (4) retaliation for filing a charge or asserting rights under the anti-discrimination provision.

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 Form I-9 is published by the U.S. Department of Homeland Security (DHS). According to DHS guidance, an employer may request I-9 documents prior to the first day of work, so long as an offer of employment has already been unambiguously extended and accepted.<sup>1</sup> However, an employer that adopts this practice – whether across the board or just in

<sup>1</sup> "The law requires that you complete the Form I-9 only when the person actually begins working. However, you may complete the form earlier, as long as the person has been offered and has accepted the job. You may not use the

some departments -- should take affirmative steps to ensure that employees are not treated differently on the basis of citizenship status or national origin. In addition, if the new employee has forgotten, or does not have, a single document or combination of documents to establish authorization to work and identity, the employer has, in most cases, up to three business days to complete the Form I-9.<sup>2</sup>

We hope this information is of assistance to you. Please feel free to contact us through our toll free number at 1-800-255-7688 if you have any further questions.

Sincerely,



Katherine A. Baldwin  
Deputy Special Counsel

---

I-9 process to screen job applicants." HANDBOOK FOR EMPLOYERS: INSTRUCTIONS FOR COMPLETING THE FORM I-9 (Employment Eligibility Verification Form), Page 29, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, M-274 (Rev. 7/31/09), available at <http://www.uscis.gov/files/form/m-274.pdf>

<sup>2</sup> Id. at 30.