

How to Interview a Prospective Employee and Complete the I-9 Form

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Interviewing and hiring new employees and dealing with documentation can be a daunting job in a dairy enterprise. This NebGuide lists questions that can and cannot be asked of a prospective employee during the interview process, and concerns regarding the authenticity of the I-9 form.

THE I-9 SECTION OF THIS NEBGUIDE SHOULD NOT BE USED AS A LEGAL INTERPRETATION OF THE FEDERAL REQUIREMENTS. THIS SECTION SHOULD ONLY BE USED AS A RESOURCE TOOL WHEN WORKING WITH POTENTIAL EMPLOYEES.

What To Ask and What Questions to Avoid

Interviewing

Employers want to ask prospective employees many questions, most are appropriate but some should not be asked in order to comply with equal opportunity laws. The following list from the employment office of the University of Nebraska–Lincoln should help clarify what kinds of questions can and cannot be asked during an employment interview.

Questions that may be asked:

(Please note some questions should be asked only after the person has been hired.)

Name:

The employer may ask if an applicant's work records are under another name for purposes of accessing those records.

Address/Housing:

The employer may ask the applicant's address, phone number, and/or how he or she can be reached.

Age:

After hiring, the employer may require a copy of the person's birth certificate to prove age. The employer also may ask a person's age to verify whether he or she is of legal age for a specific type of employment.

Race/color

National origin:

To indicate that the institution is an equal opportunity employer, the employer may, after hiring, ask race and/or nationality for the purpose of affirmative action plan statistics.

Gender:

To indicate that the institution is an equal opportunity employer, the employer may, after hiring, ask gender for the purpose of affirmative action plan statistics.

Citizenship:

The employer may ask whether ALL applicants are legally authorized to work in the United States. (The employer should not ask only one applicant; all applicants must be asked this question in order to make it legal.)

Marital/Parental/Family Status:

After hiring, the employer may ask marital and parental status for insurance and tax purposes. The employer also may ask the name, relationship and address of a person who can be notified in case of an emergency.

Military Service:

The employer may inquire about a person's service in the U.S. armed forces, including branch of service, rank attained and any job-related experience.

Education:

The employer may ask whether the applicant has the academic, professional or vocational training required for the job and which institution provided it. Questions about language skills such as reading and writing foreign languages, if job related, can be requested.

Criminal Record:

The employer may inquire about convictions for the reason for the inquiry is a business necessity.

References:

The employer may request general and work references not relating to race, color, religion, sex, national or ethnic origin, age, disability or marital status.

Organizations:

The employer may ask about membership in professional organizations and unions, and about offices held.

Photographs:

After hiring, the employer may require photographs for identification purposes.

Work Schedule:

The employer may ask about an applicant's willingness to work the required schedule, and to ask if he or she has military reservist obligations.

Physical Data:

The employer may require proof of ability to do manual labor, lifting and other written physical requirements if necessary for the job.

Disability:

The employer may ask whether the applicant is capable of performing the essential functions of the job with reasonable accommodation.

Other Qualifications:

The employer may inquire about any area that has direct relevance to the job.

Questions That Should Never Be Raised

Name:

The employer may not ask the ethnic origin of an applicant's name; whether a woman is a Miss, Mrs. or Ms; or request that a woman provide her maiden name.

Address/Housing:

The employer may not ask about place or length of current and previous addresses.

Age:

The employer may not ask age or age group of the applicant.

Race/color**National origin:**

The employer may not make any inquiry that would indicate race, color or national origin.

Gender:

The employer may not make an inquiry which would indicate gender unless job related.

Religion/Creed:

The employer may not ask the applicant's religion or religious customs and holidays. The employer also may not request recommendations from church officials.

Sexual Orientation:

The employer may not inquire about sexual preference.

Citizenship:

The employer may not ask for date of citizenship or whether an applicant is native-born or a naturalized citizen, nor may the employer ask whether an applicant's parents or spouse is native born or naturalized. The employer may not require proof of citizenship before hiring.

Marital/Parental/Family Status:

The employer may not ask marital status before hiring.

Family status:

The employer may not ask the number and/or age of children, who cares for them, or if the applicant plans to have more children.

Military Service:

The employer may not request military service records or ask about military service in the armed service of any other country, nor may the employer ask about the type of discharge a person received.

Education:

The employer may not ask the racial or religious affiliation of schools attended nor ask how foreign language ability was acquired.

Criminal Record:

The employer may not inquire about arrests.

References:

The employer may not request references specifically from clergy or any other persons who might reflect race, color, religion, gender, national or ethnic origin, age, disability or marital status.

Organizations:

The employer may not request a listing of all clubs to which an applicant belongs or has belonged.

Photographs:

The employer may not request photographs before hiring.

Work Schedule:

The employer may not ask about willingness to work any particular religious holiday.

Physical Data:

The employer may not ask height and weight, impairment or other nonperformance related physical data.

Disability:

The employer may not exclude disabled applicants as a class on the basis of their type of disability. (Each case must be determined on an individual basis by law.) Before hiring, the employer may not initiate questions regarding the specific accommodations needed.

Other:

The employer may not ask about political affiliation.

Qualifications:

The employer may not inquire about any item not related to a bona fide requirement of the job that may present information permitting unlawful discrimination.

I-9 Forms, Document Validation, Social Security Cards

I-9 FORMS

All agricultural businesses should be committed to hiring only legal workers. When applicants present their Employment Eligibility Verification ID, particularly their Resident Alien cards (Green Cards) must be accepted if they "reasonably" appear to be genuine. **Do not** accept obviously fake cards or any other ID. Some of the Green Card photos may be up to 10 years old and may not exactly resemble the person. As long as there is a reasonable resemblance, it can be accepted. Employment Authorization Cards are renewed every year. The pictures on those cards should look like the presenter. **Most cards "reasonably" appear genuine without subjecting them to intense scrutiny.** It is at your discretion

to make copies of ID cards for I-9 purposes. If, however, one copy is kept for an individual, copies for all individuals must be retained.

If a worker doesn't have all of his/her ID, the person can be hired but must provide an ID or proof that they have applied for the ID, as an example, within three working days. If this information is not provided, an employer may terminate. If such a situation is encountered, attach a note to the I-9 and document this procedure. Make a note that identification is owed. If the worker brings in proof of application, an ID should be available with 90 days.

When workers fill out the I-9, an employer must have a copy of the I-9 instructions posted in the room where they can be seen by the applicants. Please refer to the following government Web site when hiring immigrants, as it contains valuable information on how to adjust to living in the United States. It also gives tips on filling out the I-9 in English and Spanish.

<http://uscis.gov/graphics/citizenship/settled.htm>

Providing the translated Section 1 to help applicants fill out the I-9 does not constitute translation assistance. The Preparer and/or Translator Certification does not need to be completed if no further assistance is given. If additional help is provided, then the certification should be completed.

Before signing the I-9, make sure that all the rules have been rigorously followed. Remember, the Section 2 Certification says: "I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named...and to the best of my knowledge the employee is eligible to work in the United States." If the employer is uncomfortable with signing, ask the owner of the firm for advice. Ask the owner to verify the ID and sign the form if there are still concerns.

If, after hiring, an employee self-identifies their illegal status, three days should be given to produce valid identification. If they do, fill out a new I-9. If they can't, terminate the employee and document the reason and place this information in their personnel file.

Document Validation

While no one expects the employer to be a documentary police person, one should be reasonably sure the documents presented are valid and belong to the person presenting the card. The following information will help in detecting fraudulent documents commonly presented for Section 2, Column A of the I-9:

- A. **Resident Alien (I-551) Card** (issued from August 1989 to December 1997)
 1. Photos on the card are computer generated. Look for a raised photo or cut out photo by turning the card in the light.
 2. Look for the striated edges on the laminate around the card. Counterfeiters have not been able to duplicate this effect.
 3. Look for detail in the center of the light blue eagle and shield in the INS logo. Real cards have excellent, clear detail. Fake cards have thick blotchy lines that run together.
 4. The INS logo in the center will slightly overlap the right side of the photo. If it does not overlap or only touches the photo, it is not valid.
 5. The picture will not be directly face on and will show the right ear of the person. No real photo will show a person wearing an earring, dark glasses or a hat.
 6. The bearer's name will have punctuation. Last name, comma, followed by the first name. Last name may be hyphenated.
 7. Printing for the DOB, Alien Number, and card expiration date on the front center of the card will be in perfect alignment.
 8. There will be three lines of machine-readable print inside the white area at the bottom back of the card. These will not run into the blue area above the white. These are in a special font. Pay particular attention to the "0." It will be flat on the top and bottom instead of rounded.
 9. No expiration date will be older than December 2007.
- B. **Permanent Resident (I-551) Card** (issued beginning December 1997)
 1. Numerous holograms on the face of the card. Statue of Liberty hologram over the right side of the photo area.
 2. The picture will not be directly face on and will show the right ear of the person. No real photo will show a person wearing an earring, dark glasses, or a hat.
 3. Three lines of machine-readable print in white area at the bottom front of the card.
 4. Large optical memory stripe on the back of the card includes an etched photo of the bearer and other information.
 5. Micro-pictures of the 50 presidents above the optical stripe are very detailed. Counterfeits will have cartoon-like pictures.
 6. Micro-pictures of the flags of the 50 states are in a stripe below the optical stripe.
- C. **Employment Authorization (I-688A) Card**
 1. Gold INS logo becomes visible when tilted under normal light.
 2. Red outline map of the United States on the back (without Hawaii and Alaska).
 3. Word "VOID" is capitalized and underlined.
 4. May have extension stickers on the back for 90 days or one year. May have multiple stickers.
- D. **Employment Authorization (I-688B) Card**
 1. Front has yellow interlocking wavy lines.
 2. Gold INS logo becomes visible under normal light.
 3. Red outline map of the United States on the back (with Alaska and Hawaii in lower left side).
- E. **Employment Authorization (I-766) Card (Issued beginning January 1997)**
 1. Holograms on front of Statue of Liberty, U.S.A. and words US Immigration and Naturalization Service.
 2. The border around the red title of the card is micro printing as is the blue boarder of the INS logo.
 3. The card number and bar code at the back top of the card are etched into the card and will feel rough to the touch.

Social Security Card

Social Security Card Validation

1. Cards have the revision date in the lower left corner of the back of the card.
2. Cards issued after October 1983 have raised printing on the front. Especially noticeable on the columns on the sides of the card. Lightly drawing the back tip of a fingernail across the column will detect the raised printing.
3. Cards issued after October 1983 have micro printing instead of a line for the signature. Micro printing says "Social Security Administration" repeated for the length of the line.
4. Look for random multicolored dots on the front and back of the card. Dots are about the size of a pin head. Counterfeit cards will not have these dots.
5. The minute blue lines in the background on the card front are interrupted by blue blotchy areas. On examination, these blotchy areas spell the word "VOID." This prevents photo-duplicating valid Social Security cards.

Social Security Numbers: The following information may help screen Social Security Numbers (SSN) when hiring new employees. Having a valid SSN should be a Condition of Employment. Accurate names and SSNs are important for several reasons. The Social Security Administration (SSA) cannot give the employee credit for his/her earnings unless both the name and SSN reported on the Form W-2 match exactly with the information in the SSA's records. The employer is responsible for reporting the information accurately. Invalid numbers may result in IRS fines against the employer.

SSNs are arranged into three segments: a three-digit area number, a two-digit group number, and a four-digit serial number (e.g., 123-45-6789). There are certain numbers that have never been issued. If one of these numbers is detected, inform the potential employee that he/she must contact their nearest SSA office to resolve the discrepancy and receive a valid SSN. A person with the following numbers cannot be hired.

	AREA XXX	GROUP XX	SERIAL XXXX
INVALID NUMBERS	800 series 900 series 000 series	00	0000

When taking information from a new employee, ask to see his/her Social Security card so that it is evident exactly how their name appears on the card. The employee does not have to show the card and be demanded to do so. If they are not willing to show you the card, ask them exactly how their name appears on the card. The card must be seen if they present it as ID for the I-9. That is a good time to record the correct name as shown on the card

SSN verification and action: An employee need not be terminated because there is a discrepancy between their reported information and the SSA's data banks. If the SSA sends notification that there may be a discrepancy, give the

employee with a discrepancy a letter asking them to contact the SSA, resolve the discrepancy and report the resolution. If they do not report back, give a second letter at the end of the tax year. If the person still does not report back, give a third letter at the end of the next tax year. After three letters, no further action needs to be taken. An employee should be terminated if the information results in an invalid number or if the SS card is obviously fake and the employee cannot correct the problem. Employees with an invalid number should normally be given 30 days to contact SSA and fix the problem. Once the problem is corrected, the employee must cooperate in correcting all company records, their W-4 and the I-9.

Duplicate Social Security Numbers: Occasionally one may receive allegations that an employee is using a SSN belonging to someone else. Unless an official communication is sent from the SSA or another government agency identifying an employee as the person using the illegally duplicated card, no additional action needs to be taken. An employer has neither the responsibility nor the means to identify which user is the actual card owner. The employee should tell the person reporting the problem to contact their local law enforcement and file charges of identity theft.

SSA and the Department of Homeland Security (DHS): A discrepancy report from SSA makes no statement about the employee's immigration status. An employer does not routinely need to terminate employees because of SSN discrepancies. As long as the card presented appears valid and reasonably relates to the person presenting it, the employer has met the DHS (USCIS/ICE) requirements. If an employee brings in a new Social Security card with corrected information, the employer should retrieve the I-9 and make appropriate corrections.

SSA audits: Every year the SSA sends audit letters asking the employer to verify information for employees when their name or SSN on their W-2 doesn't match the SSA records. The employer must identify the employee with the mismatched SSN, send a letter asking to verify the information with SSA, and ask the person to report back. The employer then must report to the SSA the actions taken to resolve the errors and correct any problems. Potentially the IRS could levy a \$50 fine for each mismatch. By following the correction procedures and documenting efforts taken, the employer will probably avoid any fines.

If a person receives a third discrepancy notification from the SSA, the DHS holds that the company then has constructive knowledge of having hired and continuing to employ an undocumented employee. The dairy is subject to significant fines if this is found true. The employer must take appropriate action up to and including termination in such cases after consulting with labor attorneys.

Photocopying and retaining Form I-9. A blank I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three years after the date of hire or one (1) year after the date employment ends, whichever is later.

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