

Policy 1326 Immigration Reform & Control Act

Date of Current Revision: July, 2008
Responsible Officer: Director, Human Resources

1. PURPOSE

The purpose of this policy is to ensure that the university complies with the Immigration Reform and Control Act (IRCA) in ensuring that all university employees' identity and eligibility to work in the United States are verified.

2. AUTHORITY

Under IRCA, when hiring, discharging, or recruiting or referring for a fee, employers with four or more employees may not:

- Discriminate because of national origin against U.S. citizens, U.S. nationals, and authorized aliens
- Discriminate because of citizenship status against U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization: permanent residents, temporary residents (that is, individuals who have gone through the legalization program), refugees, and asylees.

Employers can demonstrate compliance with the law by following the verification ([I-9 Form](#)) requirements and treating all newly hired and rehired employees the same.

Further, the Act requires that employers verify the identity and certify the citizenship status of all newly hired and rehired employees, including United States citizens, within three business days of employment. If a person is hired for less than 3 days, the I-9 must be completed before any employment commences.

3. DEFINITIONS

Asylee:

An alien in the United States or at a port of entry who is found to be unable or unwilling to return to his/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 the alien's race, religion, nationality, membership in a particular social group, or political opinion. For persons with no nationality, the country of nationality is considered to be the country in which the alien last habitually resided. Asylees are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States.

Break in Service

For Form I-9 purposes, a break in service is considered any temporary discontinuation of employment that lasts longer than one year.

Immigrant =green card holder=resident alien=permanent resident:

An 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 U.S. Citizenship and Immigration Services in the United States.

U. S. Citizenship and Immigration Services:

A government agency responsible for the admission, control and status of all aliens in the United States. The regulations of the USCIS are contained in Title 8 of the Code of Federal Regulations.

Non-immigrant:

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, fiance(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.

Passport:

An official governmental travel document that certifies the identity and nationality of a person and grants him/her permission to travel abroad (travel to certain countries may be limited).

Refugee:

Any person who is outside 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 subject to ceilings by geographic area set annually by the President in consultation with Congress and are eligible to adjust to lawful permanent resident status after one year of continuous presence in the United States.

U.S. Citizen:

A person born in the United States, or naturalized, holding a U.S. passport.

4. APPLICABILITY

This policy applies to all employees of the university.

5. POLICY

The university will comply with the Immigration Reform and Control Act. The United States Citizenship and Immigration Services (USCIS) requires the completion of the [Employment Eligibility Verification](#) (Form I-9) to verify identity and eligibility to work in the United States. The Act prohibits discrimination in employment, and supervisors who knowingly hire unauthorized aliens are subject to both civil and criminal penalties. It is not illegal to give preference to a U.S. citizen over an (alien) if the two individuals are equally qualified.

6. PROCEDURES

6.1 The Act requires employers to have their employees complete Section 1 of the Form I-9 no sooner than a job offer has been accepted and no later than the first day of employment. For Form I-9 purposes, an employee's first day of employment is the first day that the employee is physically present on campus. For employees who work off-campus, the first day of employment is the first day that an employee engages in work for the university.

A representative from Human Resources or an HR approved designee must certify documents establishing the employee's identity and eligibility to work by completing Section 2 of the form.

6.2 All employees must have one of the following in place by **their first day of employment**:

- Item #1: A correctly completed I-9 form on file in Human Resources
or
- Item #2: Receipts proving that appropriate application(s) has/have been made to obtain otherwise acceptable documents for completion of the I-9 form where the document(s) was/were lost, stolen or destroyed.
or
- Item #3: A signed waiver by the appropriate division head allowing the employee to begin work without Item #1 or Item #2 provided that Section I has been completed by the employee on or before the first day of employment.

If an employee submits Item #2 in order to begin work, a correctly completed I-9 form must be submitted within 90 days of employment or the employee will be terminated.

If an employee submits Item #3 in order to begin work, either Item #1 or Item #2 must be submitted within three business days of beginning employment or the employee will be terminated.

6.3 A new employee must complete Section 1 of Form I-9.

6.4 A representative from Human Resources or an HR approved designee must complete Section 2 by examining evidence of identity and employment eligibility and completing list A, or B and C in its entirety. Documents examined must be originals, not photocopies.

6.5 Documents that may be used to verify identity and employment eligibility are listed on the back of Form I-9. The applicant may select which document(s) to present when there is a choice.

6.6 If the employee is other than a US. Citizen or a Lawful Permanent Resident (marked by the employee in Section I of the I-9), the university may not require the production of specific documents to prove immigration status provided the employee is able to complete the I-9 with qualified documents from List A or List B & C. If documentation is unavailable, and has been applied for by the employee, a receipt is required for verification. The employee must produce the actual document within twenty-one days of hire or recertification.

6.7 For Form I-9 purposes, a break in service is considered any temporary discontinuation of employment that lasts longer than one year. When an employee has a break in service from the university, the rehired employee must complete a new Form I-9 on the first day of employment following the same procedures noted in sections 6.1 through 6.6 of this policy.

6.8 Form I-9 is available at the following link <http://www.jmu.edu/humanresources/pdfs/I-9.pdf>

7. RESPONSIBILITIES

Hiring supervisors are responsible for the timely notification to Human Resources of all newly hired and rehired employees.

Once notified by the hiring department, Human Resources is responsible for ensuring that each new employee completes an I-9 Form correctly and timely.

Employees are responsible for completing the I-9 form accurately and timely.

Human Resources is required to retain Form I-9 for at least three years or one year after the termination date, whichever is later. When a person is employed for more than three years, the form must be retained for one year after the termination date. Forms must be available for inspection to the USCIS or Department of Labor upon request, thus the requirement that the I-9 is on file for all individuals employed at James Madison University.

8. SANCTIONS

Failure to follow the requirements of this policy as stated will result in the termination of employment of the employee as specified.

Other sanctions will be commensurate with the severity and/or frequency of the offense and may include termination of employment.

9. EXCLUSIONS

This policy applies only to JMU employees. University affiliates, such as those employed by Aramark, Follett, Pitney Bowes, etc., are the responsibility of their particular employer.

10. INTERPRETATION

The authority to interpret this policy rests with the President, and is generally delegated to the Director of Human Resources.

Previous Version: May, 2008

Approved by the President: February, 2008

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IRCA

I-9 Form