

## **2.11 EMPLOYMENT ELIGIBILITY VERIFICATION**

### **OBJECTIVE:**

In accordance with the Immigration Reform and Control Act of 1986, it is the Virginia Department of Social Services' Division of Human Resource Management (VDSS/DHRM) policy to hire only those individuals who are authorized to work in the United States. Pursuant to this law, it is also the agency's policy to prohibit discrimination against any person in hiring, discharging, or recruiting because of a person's national origin or citizenship status.

### **2.11.1 Employees to whom policy applies**

This policy applies to all newly hired and re-employed full-time and part-time classified employees and wage (P-14) employees.

### **2.11.2 Definitions**

#### **2.11.2.1 Acquired Citizenship**

Citizenship conferred at birth on children born abroad to a U.S. citizen parent(s).

#### **2.11.2.2 Alien**

Any person not a citizen or national of the United States.

#### **2.11.2.3 Certificate of Citizenship**

Identity document proving U.S. citizenship. Certificates of citizenship are issued to derivative citizens and to persons who acquired U.S. citizenship.

#### **2.11.2.4 Employee**

Full-time and part-time classified and wage (P-14) employees hired and re-employed by the VDSS/DHRM after November 6, 1986. Independent contractors or persons who provide labor to VDSS who are employed by a contractor providing services are not employees.

#### **2.11.2.5 Employer**

Virginia Department of Social Services, Division of Human Resource Management (VDSS/DHRM).

#### **2.11.2.6 Form I-9**

Employment Eligibility Verification Form.

#### **2.11.2.7 Immigrant**

A foreign national who intends to reside permanently in the United States.

#### **2.11.2.8 Immigration Reform and Control Act (IRCA) of 1986**

Public Law 99-603 (Act of 11/6/86), which was passed in order to control and deter illegal immigration to the United States. Its major provisions stipulate legalization of undocumented aliens who had been continuously unlawfully

present since 1982, legalization of certain agricultural workers, and sanctions for employers who knowingly hire undocumented workers, and increased enforcement at U.S. borders. This law also establishes documentation and record keeping requirements for all employers, regardless of whether they hire aliens or not. Because the law requires an administrative burden on potential employers, the law also protects authorized non-citizens from discrimination that may arise from the law's requirements.

**2.11.2.9 National**

A person owing permanent allegiance to a state.

**2.11.2.10 Nonimmigrant**

A foreign national who intends to remain only temporarily in the United States, and to return to an unabandoned foreign residence abroad.

**2.11.2.11 Permanent Resident Alien**

An alien admitted to the United States as a lawful permanent resident.

**2.11.2.12 Re-employed Employee**

Employees formally employed by the Commonwealth of Virginia who are re-hired following a period of separation from state service that exceeds 30 calendar days.

**2.11.2.13 U.S Citizen**

Generally those individuals who were born in the United States, or through birth abroad of two United States citizens, or through birth abroad to one United States citizen.

**2.11.2.14 U.S. Immigration and Naturalization Service (INS)**

A federal agency of the Department of Justice responsible for enforcing the laws that include regulating work authorization and other permits.

**2.11.3 Employment eligibility and verification**

**2.11.3.1 Notification of Eligibility and Verification**

1. On or before the employment start date, a newly hired or re-employed employee will be advised by VDSS/DHRM of the requirement to provide documents that establish identity and employment eligibility. This advisement will be included in the offer of employment letter. The Form I-9 and list of acceptable documents will be provided in the new employee hire packet.
2. Employees whose separation from VDSS does not exceed 30 calendar days are not required to complete Form I-9.

**2.11.3.2 Completion of Form I-9 – Employee Responsibilities**

1. A newly hired or re-employed employee located in the Central or Central Regional Offices must attend new employee orientation on their first day of

employment to complete Section 1 of the Form I-9 and present acceptable documents.

2. All other employees must report to their respective regional or district offices on their first day of employment to complete Section 1 of the Form I-9 and present acceptable documents.
3. If the employee cannot make available acceptable documents within three business days, the employee must present a receipt that shows that he or she has applied for the appropriate documents within three business days of hire. The employee must produce the appropriate documents within 90 days of hire. The 90 days grace period does not apply to aliens who indicate at the time of hire that they do not have work authorization.
4. If the employee cannot present the acceptable documents and/or receipts, the employee will be removed from the agency's payroll and terminated by VDSS/DHRM or the regional/district manager.

#### ***2.11.3.3 Completion of Form I-9 and Review of Documents – VDSS/DHRM or Regional/District Manager Responsibilities***

1. Check original documents establishing employees' identity and eligibility. Examination of documents requires one document from List A, **or** one from List B **and** one from List C.
2. In Section 2 of Form I-9; (a) Record the title, issuing authority, number and expiration date (if any) of the document(s); (b) Fill in the date of hire and correct information in the certification block; and (c) Sign and date the form.
3. For individuals who are hired and work less than three business days, VDSS/DHRM or the Regional/District Manager is required to examine documents and sign the verification form at the time of hire. Under these circumstances, receipts in lieu of documents are not acceptable.
4. The authorized regional/district manager must fax Form I-9 to VDSS/DHRM at (804) 726-7027 on the employee's first day of work, and send original Form I-9 and a copy of reviewed documents to VDSS/DHRM.

#### ***2.11.4 Receipts In-Lieu of Documents – VDSS/DHRM or Regional/District Manager Responsibilities***

1. On the day of hire, re-verify that the employee checked the box in Section 1 indicating that they are eligible to work in the U.S.
2. Record the document title in Section 2, and write the word "receipt," and a document number (if any) in the space labeled "document #."
3. Follow up with the employee within 90 days of the date of the employment to review the actual document.
4. Review the actual document, cross out the "receipt" on the Form I-9 and any document number, insert the number for the actual document, and initial and date the change.

#### ***2.11.5 Re-verification of Documents – VDSS/DHRM Responsibilities***

When an employee's authorization that supported his or her ability to work expires:

1. VDSS/DHRM must re-verify the employee's eligibility to continue work.

2. VDSS/DHRM must complete Section 3 of the Form I-9 to document eligibility was re-verified, or if the section has been used previously, use a new form.
3. When using a new form, VDSS/DHRM must write the employee's name in Section 1, complete Section 3 and retain the new form with the original form.
4. The employee must present a document that shows either an extension of the expiration date on the document used to establish the employee's initial employment authorization, or a different document that can be used to establish work authorization.
5. If the employee cannot present proof of current work authorization, the employee will not be allowed to continue their employment with the agency.
6. VDSS/DHRM will remove the employee from the agency's payroll and terminate the employee's employment with the agency.

### **2.11.6 Acceptable documents**

#### **2.11.6.1 Acceptable Documents**

1. The VDSS/DHRM or the regional/district manager must accept original documents or combination of documents presented by the employee that reasonable appear on their face to be genuine and relate to the person presenting them. A photocopy of a document is not acceptable. The only exception is an employee may present a certified copy of a birth certificate.
2. VDSS/DHRM cannot specify which document(s) an employee must present.

#### **2.11.6.2 Lists of Acceptable Documents**

1. Form I-9 (Rev. 11-21-91) lists acceptable documents that establish identity, employment eligibility and/or both.
2. Until INS revises Form I-9 to reflect rules that resulted in reducing the lists of documents acceptable for employment verification under List A, VDSS/DHRM shall follow INS instructions to continue to use the current version of the Form I-9 (Rev. 11-21-91).

#### **2.11.6.3 Records and maintenance**

1. VDSS/DHRM shall retain I-9 forms and copies of identity and employment eligibility documents for as long as the employee is employed by the agency.
2. VDSS/DHRM shall retain I-9 forms and supporting identity and employment eligibility documents for period of one year after the separation date of the employee.
3. Forms must be made available for inspection to the Immigration and Naturalization Service or Department of Labor official upon request.

#### **2.11.6.4 Violation**

INS can impose civil and criminal penalties if the agency fails to comply with immigration law.

