Purpose
A national policy on immigration is established which requires that all employers hire only those persons legally entitled to work in the United States.

Who Must Comply
There are no small employer or agricultural employer exemptions. All employers, including employers of permanent, year-round workers, as well as seasonal workers, are subject to civil and criminal penalties for violation of federal immigration policies.

Immigration Reform and Control Act (IRCA) of 1986
• IRCA makes it unlawful for an employer to hire, recruit, or refer for a fee two types of persons: (1) an alien the employer knew (or should have known) was unauthorized to work in the United States, and (2) any individual for whom the employer has not completed and retained an employment authorization form (I-9 form).
• IRCA prohibits employers from continuing to employ aliens found to be unauthorized after they were hired.
• IRCA imposes recordkeeping requirements for verification of the identity and employment eligibility of every employee. If an employer ignores this responsibility and knowingly hires workers not authorized to work in the United States, that employer is subject to a range of fines and possible criminal penalties.
• The definition of knowingly hiring has been expanded under IRCA to hold liable an employer for hiring undocumented aliens if it can be proven that the employer should have known an individual was unauthorized (i.e., constructive knowledge).
• IRCA contains strict prohibitions on discriminating against any individual based on national origin or citizenship status.

**Employers Must**

• Have employees and prospective employees complete their part of Form I-9 when they start to work. Employers must then check Form I-9 for completeness. Form I-9 can be found online at [http://www.uscis.gov/files/form/i-9](http://www.uscis.gov/files/form/i-9).

• Inspect the employee's documents establishing the employee's identity and eligibility to work, noting the employee's document identification (ID) number and expiration date.

• Properly complete the employer's part of the I-9 form. This must be completed within three business days or at the time of hire if employment is for less than three days.

• Retain Form I-9 for at least three years or one year after the employee leaves, whichever is longer.

• Present Form I-9 for inspection when requested by a USCIS, DOL, or OSC officer. Inspection officers are required to give at least three days advance notice before an inspection.

**Exceptions to Form I-9 Requirements**

There are limited exceptions to Form I-9 recordkeeping requirements. Form I-9 does not need to be completed for household employees who work on an intermittent basis.

Form I-9 is not required for persons provided by a contractor providing contract services (such as employee leasing). Form I-9 does not need to be completed for independent contractors or their employees.

You may rely on a state employment service to complete Form I-9 for persons referred by the state employment agency if the agency performs that service. (The Florida Jobs and Benefits Center will complete and retain Form I-9 only if requested to do so by the individual employer.)

However, employers have, in some cases, found that workers referred by state agencies were actually illegal. The fact that a worker was referred by the Jobs and Benefit Center office does not necessarily relieve an employer of liability under IRCA for hiring an illegal alien, although using this office does relieve much of the liabilities.

If an employer relies on a state employment service (SES) for I-9 services, certification must be retained by the employer in the same manner as Form I-9 and presented for inspection if requested. Using an SES I-9 service relieves an employer from liability for knowingly hiring an illegal alien.

Some grower organizations have set-up I-9 offices to serve as agents for their members in completing and retaining Form I-9. Generally, the worker is issued a picture ID card that the worker presents to the member employer when hired. It should be noted that the employer is still responsible for compliance and may be liable for violations of the law if the I-9 office errs.

Form I-9 is available from the United States Citizenship and Immigration Services (USCIS). You can obtain Form I-9 online from USCIS at [https://www.uscis.gov/i-9](https://www.uscis.gov/i-9) or by calling USCIS at 1-800-375-5283 [toll-free], or by calling the Bureau of Citizenship and Immigration Services Forms Request Line at 1-800-870-3676 [toll-free].

**Enforcement**

IRCA charges the USCIS with primary enforcement of the law. However, USCIS has entered into an agreement with the United States Department of Labor (DOL) which is authorized to inspect Form I-9 recordkeeping. Most IRCA compliance / I-9 inspections take place during regular DOL wage/hour inspections. If DOL suspects the employer of knowingly hiring illegal aliens, inspectors will alert the USCIS. Agencies must give employers a three-day notice of IRCA inspections.

IRCA sharply limited the USCIS’s ability to conduct open field searches. The USCIS is currently required to obtain a search warrant to enter farms, orchards, groves, ranch lands, or other open agricultural properties without the owner’s consent. This restriction does not apply within twenty-five miles of the United States border or in cases of hot pursuit.

Civil money penalties and criminal penalties may be levied against employers for failure to comply with IRCA. These include

**Hiring, Recruitment, and Referral Violations:** Employers will be subject to a cease-and-desist order and fined according to the following scale:

• $375 – $3,200 for each alien for the first offense.
• $3,200 – $6,500 for each alien for the second offense.
• $4,300 – $16,000 for each alien for the third and subsequent offenses.
Recordkeeping / I-9 Verification Violations: Employers will be subject to a cease-and-desist order and fined according to the following scale:

- $110 – $1,100 for each individual worker, regardless of whether or not the person is illegally employed.

Bonding Violations: If it is found that an employer required employees to post bonds against liability for employer sanctions, the fines are $1,100 for each employee.

Document Fraud: Any individual who has knowingly engaged in or used, accepted, or received any forged or counterfeited documents is subject to fines ranging from $375 to $6,500 for each instance of use, acceptance, or creation of a document.

In cases that can establish a pattern and practice of violating IRCA’s hiring and referral provisions, fines are $3,000 per illegal alien plus up to six months in prison.

Discrimination

Employers of four or more employees may not discriminate against any person (other than an unauthorized alien) in hiring, discharging, recruiting, or referring for a fee because of national origin or citizenship status. Because Title VII of the Civil Rights Act of 1964 is in effect for employers of fifteen or more employees, discrimination complaints involving national origin will be reported as follows: (1) one to three employees, not covered; (2) four to fourteen employees, to the Office of Special Counsel, Department of Justice; and (3) fifteen or more employees, to the Equal Employment Opportunity Commission. (For Florida deferral agencies, see EDIS document FE393, Civil Rights and Antidiscrimination [Federal].) Discrimination complaints involving citizenship status against employers of four or more employees will be filed with the Department of Justice.

Recruiters and Referrers for a Fee

Recruiters/referrers for a fee should complete Form I-9 for any person they refer who is hired by an employer. Form I-9 should be completed within three business days of hiring.

The recruiters or referrers may designate agents to complete the verification process on their behalf, but they are still responsible for obtaining and filing a copy of Form I-9, and are still responsible and liable for compliance with the law. Recruiters and referrers must retain Form I-9 for three years after the date the referred individual was hired by the employer.

Independent Contractors

Employers can be held liable for the actions of an independent contractor if an unauthorized alien is hired and the user of the independent contractor has actual knowledge of the lack of work authorization. Independent contractor is redefined as follows: “The term independent contractor includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results.”

Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls himself/herself/itself, will be determined on a case-by-case basis.

Correction of Form I-9

The 1996 law provides that an employer, who, in good faith, makes a technical or procedural error in completing Form I-9, will have an opportunity to correct the error without penalty.

The only employers not allowed to utilize this good faith defense are those who fail to correct their non-compliance within ten working days of receiving an explanation from USCIS that the agency found them out of compliance, or employers who engage in a pattern and practice of violations.

Unfair Immigration-Related Employment Procedures

Under the 1996 law, an employer’s request for more or different documents than are required to confirm an employee’s identity and authorization to work or an employer’s refusal to honor documents that reasonably appear to be genuine will only be considered document abuse if made for the purpose, or with the intent, of unlawfully discriminating against the employee on the basis of citizenship status or national origin (https://www.justice.gov/eoir).

Unauthorized Use of Social Security Numbers

With the 1996 law, the Commissioner of Social Security is required to inform USCIS of aliens who have a social security number when they are not authorized to work. The
The purpose of this requirement is to assist USCIS in building a database of employers who are employing illegal aliens.

**Expansion of Document Fraud**
The 1996 Act substantially increases the criminal penalties for fraudulent use of government documents. Thus, putting false information on Form I-9 may now constitute document fraud.

**Additional Information**
- The text of the Immigration Reform and Control Act of 1986 can be found in 8 U.S.C. 1101

**Responsible Agency**
United States Department of Homeland Security
United States Citizenship and Immigration Services
20 Massachusetts Avenue, NW, MS2090
Washington, D.C. 20529
Toll-free 1-800-375-5283
http://www.uscis.gov/

**District Offices**

**Miami Office**
8801 NW 7 Avenue
Miami, FL 33150
(305) 375-5283

**Tampa Office**
5629 Hoover Boulevard
Tampa, FL 33634
Toll free 1(800) 375-5283

**Jacksonville Office**
4121 Southpoint Boulevard
Jacksonville, FL 32216
Toll free 1(800) 375-5283

**Orlando Office**
6680 Corporate Centre
Orlando, FL 32822
(407) 858-3600

Additional Field Offices available online: https://www.uscis.gov/about-us/find-uscis-office/field-offices.