

# Human Resources

By Stephanie Ramsey



HR  
Reality  
Check

Yep,  
the stories  
are true!

## HR Case Study #1

**Scenario:** ABC Funeral Home hired a new employee. On the first day of work, while completing the new hire paperwork, the employee stated that they had forgotten the required identification to complete the Form I-9. The manager provided the employee a list of documents that could be used to complete the I-9 and told the new employee to bring the identification to work the next day to complete the paperwork.

The next day turned into the next week, and the employee did not bring the documentation to complete the I-9 form. When brought to the employee's attention, the employee said they could not find their social security card and needed to get a replacement. In addition, the only other qualifying document the employee had was a driver's license. The manager understood, as this could happen to anyone.

A few weeks later, the employee informed the manager that they were having difficulty obtaining a replacement social security card. Their birth hospital was closed and a birth certificate was required to obtain a replacement card. After three months, the employer still did not have the necessary documentation. The I-9 was not complete. The employee, however, had proved to be a capable, hard-working individual who never missed a scheduled day of work. Should the business give the employee more time to obtain the required I-9 documents?

**What are the rules?** Under 8 C.F.R. §274A.2 (b) (ii) and (iii) as well as 8 C.F.R. §274A.2 (b) (1) (vii) (A) an employee must complete Section 1 of the Form I-9 on his or her first day of work for pay. The employer must complete Section 2 of the Form I-9 within three business days of the first day of work for pay. A receipt for a lost, stolen or damaged document will suffice for I-9 purposes as long as the replacement document itself is presented within 90 days of hire.

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Did the employer make any mistakes? Yes. As seen above, the law requires the employer complete Section 2 of the Form I-9 within three days of the first day the employee works for pay. If the employee provided a receipt for the lost, stolen or damaged social security card, the employer could have completed Section 2 and given the employee 90 days to replace the missing document. This failure puts the employer at risk for a compliance fine of \$110 to \$1,100 per form. Additionally, if the employee is found to be ineligible to work in the U.S. and is kept on the payroll, there may be additional fines of \$375 to \$3,200. Further, the employee's statement about the closing of their birth hospital interfering with their ability to obtain a replacement birth certificate should have raised the manager's suspicions. Why? Certified copies of birth certificates in the U.S. are requested through the vital records office in the state where an individual is born, not the hospital.

**Resolution of the issue:** The employer verified that every other employee did have an accurately completed Form I-9 on file (thus avoiding any potential claim of discrimination or retaliation in dealing with the employee who did not have a completed Form I-9). The manager had a private conversation with the employee terminating their employment based on the employee not being able to prove they were eligible to work in the U.S. as required by federal law.

**Preventive measures:** Educate all parties involved in hiring employees for the business on the requirements of the Form I-9 and retrain periodically to keep their knowledge fresh. Have a clearly established policy on completing the Form I-9. If employees cannot provide Form I-9 documentation within three days of their first day of paid employment (unless the receipt described above is presented, which would give them 90 days), the employees are making themselves ineligible to be employed with the company. The employees should clearly be informed of this the day they fill out any new hire paperwork. •