

LEGAL NEWS

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Required Employment Forms

Hiring employees today is a very complex procedure. In addition to the general concern about hiring the right person for the position, you must make sure you obtain all the required paperwork.

Internal Revenue Forms: The IRS requires employees to complete a W-4 form to indicate their tax identification number, address, marital status and number of exemptions they wish to claim. See IRS Publication 15, Employer's Tax Guide, and IRS Publication 334, Tax Guide for Small Business.

The form does not get filed with the IRS, unless the employee claims more than ten allowances or if the employee claims tax exemptions and earns over \$200 per week. If the employee does not give you a W-4 form, you must withhold as though the employee were single with no allowances.

Immigration Forms: The Immigration and Naturalization office is concerned with issues involving a person's right to work. Employers are required to have employees complete an INS form I-9 and then do the following:

- a) record which documents have been examined. Do not just attach copies of the documents. You must fill out the form.
- b) determine if the document appears valid. Beware, rejecting a document because it does not appear valid may present you with legal problems. You may want to consider going to the agency that issued the document to check its validity before you reject it.

- c) verify that the documents belong to the person presenting them.

Do not ask applicants to complete the form as part of their application process because the form contains information regarding age, national origin and lienage which could be grounds for a discrimination action if the applicant is not hired.

The I-9 forms must be kept on file by the employer for three years after hiring or one year after termination of an employee, whichever is later. Failure to comply could result in fines up to \$1000. In addition, if you hire a person who is not eligible to work, you could be subject to fines up to \$20,000 per individual. See INS Publication, Handbook for Employers: Instructions for Completing Form I-9.

Employer Forms: If you decide to hire employees, you will be required to file for an Employer Identification Number (EIN). Your social security number, while adequate, should not be used because you should separate your personal and business records with the IRS. You can apply for an EIN by completing IRS Form SS-4 and submitting it to the IRS. You can also call the IRS and obtain an EIN over the phone (but you still need to file the paperwork afterwards). See IRS Publication, Circular E, Employer's Tax Guide."

Nancy A. Chillag's law firm is located in Menlo Park. She specializes in general business, real estate and construction law. Visit her web site for more information: www.chillag.com