

THE I-9 FORM: WHAT LOCAL CHURCHES NEED TO KNOW

GNJAC CF&A, revised 3/2010

ALL employers, including churches and religious organizations, are required under federal law to verify that ALL their employees have a legal right to work in the United States. Penalties for non-compliance with this requirement are severe. The I-9 form is the basic document used by Immigration and Customs Enforcement (ICE) to ensure that employers are in compliance.

United Methodists have an obligation as citizens to comply with current law, even as we work to reform laws that are unjust. We also have an obligation as stewards to ensure that our local churches and their ministries are protected against fines and penalties resulting from violations.

The following is a joint effort of the Conference Council on Finance and Administration (CF&A) and Cabinet to assist local churches in understanding the I-9. It does not constitute legal advice or opinion and should not be construed as such. It is designed as a teaching tool to answer basic questions for pastors, treasurers, and Staff-Parish Relations Committee (SPRC) chairs.

FREQUENTLY ASKED QUESTIONS (FAQs)

What is the goal of this process? The goal is to ensure that all local churches are in compliance with federal law regarding verification of employment eligibility. The I-9 form is the primary tool the federal government uses for this purpose, and it is required for all employees hired after November 6, 1986. If churches do not have I-9 forms on file for ALL employees hired after November 6, 1986, they should begin remedial actions IMMEDIATELY. A question regarding compliance will be a part of the church conference materials beginning in 2010.

Is the I-9 form difficult to complete? In reality, though there is some background knowledge that's needed, the completion of the form itself is a relatively simple process that takes only a few minutes per employee. Step-by-step instructions are included here, and an example will also be posted at www.gnjumc.org.

Who should I call if I have questions? Begin with a call to your District Superintendent.

Do clergy need to fill out an I-9? Yes. The original is kept at the local church and a copy is sent to the district office. A new form is required any time there is a change in appointment.

How soon after hiring does the I-9 need to be completed? I-9s must be completed within three (3) days of the hiring date (for clergy, within 3 days of the start of a new appointment). Always use the latest version.

Where can I get the latest version of the I-9 form? Download it from www.uscis.gov. Look for a link to "Forms."

We already have I-9 forms for all of our employees. Do we need to do new ones?

No. But please review all of the forms, along with the enclosed information, to ensure that they are properly completed and filed. Remember, ALL means ALL – every employee must have an I-9.

Can a local church sponsor an applicant's visa? Yes, but only with prior written approval from the Office of the Bishop (pursuant to legislation passed by the 2009 annual conference; see additional information, enclosed). This step is important because, unlike other denominations, we are a connectional church with a connectional structure.

NEW GNJAC LEGISLATION REGARDING VISA SPONSORSHIPS

The following legislation was approved by the 2009 Session of the Greater NJ Annual Conference and is effective immediately.

RESOLVED, that it be the policy of the Greater New Jersey Annual Conference of the United Methodist Church (GNJAC) that any local church, pastor, or GNJAC-affiliated ministry intending to sponsor any person for an employment-related visa must receive written approval in advance from the Office of the Bishop.

Why is this necessary?

Because the United Methodist Church is a connectional church, it is in the best interest of the annual conference to have all proposed visa sponsorships by any local church, pastor, or GNJAC-affiliated ministry reviewed and approved by a central authority, in this case the Office of the Bishop. This will help to ensure that all necessary steps are being followed and that all applications are in accordance with federal law.

What is a GNJAC-affiliated ministry?

A GNJAC-affiliated ministry, for purposes of this legislation, is a ministry which is:

- a) coordinated either by the GNJAC OR one of its local churches
- b) AND IS NOT separately incorporated from the GNJAC or a local church

Here is a simple test: if a ministry uses the tax ID number of EITHER the GNJAC OR one of its local churches, it is a GNJAC-affiliated ministry.

How do we start the approval process?

Begin with a call to your District Superintendent.

How will the Bishop decide whether to approve our request?

The Bishop and Cabinet are committed to making disciples for the transformation of the world. They do not wish to stand in the way of local churches doing vital ministry, especially among immigrant and ethnic communities. The Bishop's primary concern is whether the appropriate legal process is followed in making the visa application, nothing more. The annual conference retains expert legal counsel to help navigate the complexities of the law and is willing to assist local churches in their efforts to assemble diverse ministry staff to carry out their mission in changing communities.

It is the position of the Office of the Bishop and the CF&A that any local church, pastor, or GNJAC-affiliated ministry who willfully violates this policy will be solely responsible for fines or penalties incurred because of failure to comply with federal law.

HELPFUL TIPS FOR COMPLETING AND MANAGING I-9s

Immigration law is EXTREMELY complex and constantly changing. Your Bishop, Cabinet, and CF&A implore you to ask questions or seek assistance with your church's particular concerns. Your first point of contact should be your District Superintendent.

(1) Do NOT be tempted to classify employees as independent contractors to avoid dealing with immigration issues. In doing so, you may run afoul not only of Immigration and Customs Enforcement (ICE), but also the Internal Revenue Service!

(2) When completing new I-9 forms, always use the latest version, available from US Citizenship and Immigration Services (CIS), www.uscis.gov (look under "Forms"). At the CIS website, you will find both English and Spanish versions of the I-9. While the Spanish language version is helpful in aiding understanding for Spanish speakers, it is NOT valid outside Puerto Rico. Use the English version only.

(3) Read the instructions carefully. If your church is subject to an audit, fines may be levied for each error or omission. DO NOT use white-out to correct the form. Instead, cross through the error, initial it, and date it.

(4) AS CHRISTIANS, WE MUST TAKE THE ANTI-DISCRIMINATION NOTICE SERIOUSLY. While the church MUST NOT employ persons who are ineligible to work in the US, DISCRIMINATION against persons who are eligible to work based on race or nationality is unlawful and in violation of the spirit of Christ. You may ask about a person's eligibility to work in the United States during the interview process, but be sure to ask the question this way: "Are you a US citizen or national, lawful permanent resident, refugee or asylee, or temporary resident under the 1986 Immigration Reform and Control Act?" If the answer is YES, then the person is eligible to work. If the answer is NO, then you may freely inquire about his or her current immigration status.

(5) The I-9 form must be completed within three (3) days of the date of hire for ALL employees (ALL truly does mean ALL). If you need to take remedial action for employees beyond the three-day window, complete the forms as soon as possible and include a note in the file documenting your efforts to comply with the law. (Note that employees hired before November 6, 1986 are exempt from the I-9 requirement.)

(6) The standard practice for filing I-9 forms is to keep them in their own file or binder separate from the personnel files, for easy access in case of an audit. The binder should be divided into three sections: a) current employees, b) terminated employees (see #7 below), and c) employees whose documentation has a future expiration date (see #13 below). It is also good practice to have the list of acceptable documents photocopied on the back of the form for easy reference and to demonstrate that the employee has been presented with that list.

(7) Be sure to retain the I-9 forms for all employees during their entire tenure with the church. Upon the termination of employment, the I-9 must be retained for three (3) years from the date of hire OR one (1) year from the last date of employment, whichever is later. Move the I-9s for terminated employees into a separate section of the binder or file. Periodically review this section of the file and destroy I-9s beyond the retention date.

(8) Appointed clergy should complete an I-9 form within three (3) days of the start of their appointment with a church. Then forward a copy of the form to your district office.

(9) Certain types of visas (R1 & H1B, for example) are employer-specific and require a sponsoring employer. A visa sponsored by one employer is NOT valid for work with another employer. Pursuant to legislation passed at 2009 annual conference, if your church intends to sponsor an employee for a visa, the church MUST receive permission in advance and in writing from the Office of the Bishop (see additional information, enclosed). This approval is important because unlike other denominations, we are a connectional church with a connectional structure.

(10) ICE may contact local churches and request information and documentation. There are generally two types of audits: I-9 Employment Verification for ALL employees and Religious Worker/R-1 audits for employees in the immigration process. Each type of audit should be handled differently.

a) **For I-9 audits** you will be provided a period of time in which to respond. Please notify the District Superintendent immediately so that the proper documents can be assembled.

b) **For Religious Worker audits** you will need to provide as quickly as possible the information/documentation requested by the agent. Unless there is something unusual about the request, you are authorized to comply with the audit and respond directly to the agent.

COMPLETING THE FORM ITSELF

(See the enclosed sample. A how-to guide with an example will also be posted on www.gnjumc.org.)

(11) **SECTION 1:** The EMPLOYEE must complete Section 1 on his or her own. DO NOT ask for documentation for Section 1. (However, if an employee puts information in Section 1 which is clearly false, please stop the process and consult your District Superintendent.) The “Preparer or Translator Certification” can be ignored EXCEPT in the case where an employee is UNABLE to complete section 1 on his or her own. (Note that the Social Security Number field is optional in Section 1.)

(12) **SECTION 2:** The EMPLOYER must complete Section 2. You must review ORIGINAL documents from List A or Lists B and C. Do NOT photocopy the documents. Simply record the Document Title, Issuing Authority, Document Number, and Expiration Date (if any) for EACH document reviewed. In the “CERTIFICATION” section, be sure to fill in the date the employee began employment. The pastor or SPRC chair are appropriate signatories on the line marked “Signature of Employer or Authorized Representative.”

When it comes to List A, B, and C documents, employers are not expected to be document experts. The test is whether a reasonable person would accept the document as valid. At the same time, the church is not required to accept List A, B, or C documents that appear fraudulent or are otherwise illegible. For example, if an applicant explains that their US Passport (a List A document) can't be read because it went through the wash, the church is within its rights to ask the applicant to present a DIFFERENT document. The church is protected, even if an applicant's documents are later found to be fraudulent, if it has followed the 'reasonable person' standard.

A few cautions: DO NOT over-document, that is, ask for MORE documentation than the form does. And, except in the case of damaged/illegible documents mentioned above, DO NOT specify what types of documents you will or will not accept – the individual must be permitted to choose which LIST A or LIST B + C documents he or she will use to meet the requirements.

(13) **SECTION 3:** Is for use only if an employee needs re-verification or is re-hired after termination. If an employee's work authorization has a future expiration date, it is important to keep his or her I-9 in a separate section of the binder or file, so that it can be re-verified at the appropriate time. Once the expiration date is reached, the employer MUST either receive evidence that the employee's work authorization has been extended, OR THE EMPLOYMENT RELATIONSHIP MUST BE TERMINATED. The employer MUST complete Section 3 of the I-9 form at the time of re-verification. Make sure to use the most current I-9 form at the time of re-verification.