

# Undocumented Workers

## Frequently Asked Questions

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# Wage & Hour Section

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## Undocumented Workers

### **WHAT IS AN UNDOCUMENTED WORKER?**

An undocumented worker is an individual that is working off the payroll OR an individual that has not furnished to their employer the necessary identification to verify their legal status or authorization to work.

### **WHAT TYPE OF IDENTIFICATION IS NECESSARY TO VERIFY A WORKER'S LEGAL STATUS?**

A valid social security card, a valid immigration or non-immigration visa, including photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, a valid work permit or supervision permit authorized by the Division of Labor, a valid permit issued by the Department of Justice or other valid document providing evidence of legal residence or authorization to work in the United States.

### **IS A WORKER PROPERLY DOCUMENTED IF THEY CARRY THE REQUIRED IDENTIFICATION ON THEIR PERSON?**

No. It is the employer's responsibility to collect proper identification from each of their workers and to have that information available as evidence of their legal status and authorization to work.

### **SIMILAR IDENTIFICATION IS REQUIRED FOR THE COMPLETION OF I-9 FORMS. CAN THAT SAME INFORMATION BE USED BY THE EMPLOYER AS PROPER AND LEGAL AUTHORIZATION TO WORK?**

Properly completed I-9 forms that list one or more of the pieces of identification required to verify an individual's legal status to work will be accepted as adequate documentation.

### **WHAT HAPPENS IF AN EMPLOYER DOES NOT HAVE THE REQUIRED DOCUMENTATION FOR EACH OF THEIR EMPLOYEES?**

An officer of the Division of Labor will serve the employer with a Notice to Produce Records and/or Documents which gives the employer an additional seventy-two hours to show their compliance by producing identification for each of their employees.

### **WHEN IS THE EMPLOYER REQUIRED TO OBTAIN THE REQUIRED DOCUMENTATION FROM THEIR WORKERS?**

An employer shall verify all employees' and all prospective employees' legal status or authorization to work prior to their first day of employment or prior to entering into a contract for services with any individual.

**DO THESE REQUIREMENTS APPLY TO ONLY WEST VIRGINIA EMPLOYERS AND ARE THEY INDUSTRY SPECIFIC?**

All employers are responsible for obtaining proper documentation for each of their employees while working in West Virginia regardless of their specific industry or business type.

**WHAT ABOUT CASUAL LABOR? IS DOCUMENTATION STILL REQUIRED FOR INDIVIDUALS JUST WORKING FOR CASH?**

Unless an individual is working in the capacity of an independent contractor and holds all the necessary licenses to engage in that type of activity, that individual will be considered an employee that must be documented. Regardless of whether or not an employee is paid by cash or check, all employees must be shown on employee payroll records. Bona-fide independent contractors are not considered employees and documentation for such individuals is not required.

**WHAT HAPPENS IF AN EMPLOYEE REFUSES TO PROVIDE THEIR EMPLOYER WITH THE NECESSARY IDENTIFICATION?**

It is the employer's responsibility to verify the legal status or authorization to work for all prospective employees prior to allowing them to engage in work. Therefore, if a prospective employee refuses to provide proper identification, then that individual is not eligible for legal employment.

**WHO IS RESPONSIBLE FOR FURNISHING EMPLOYEE DOCUMENTATION FOR EMPLOYEES BEING PLACED IN TEMPORARY ASSIGNMENTS BY AN EMPLOYEE PERSONNEL OR LEASING AGENCY?**

The responsibility for proper documentation lies with the actual employer.

**WHAT HAPPENS IF AN EMPLOYER CANNOT PROVIDE THE REQUIRED DOCUMENTATION FOR THEIR EMPLOYEES?**

Upon a determination by the Commissioner that any employee's documents are invalid or incomplete, the Commissioner shall immediately provide written notification to the employer of the violation. Any employer who knowingly employs, hires, recruits or refers an unauthorized worker is guilty of a misdemeanor, and upon conviction thereof, may be subject to a monetary penalty.