

Hiring Staff for Your Ministry...Why and How You Should Ask About Work Authorization

Churches and religious organizations have been hiring (sometimes inadvertently) foreign nationals to work in their organizations for years. Whether or not you are actively considering hiring foreign workers you need to be aware that when you recruit (whether actively or inadvertently) for a position in your organization the U.S. government regards you as a prospective employer of foreign workers and requires you to play a role in enforcing U.S. immigration laws.

Federal immigration law regulates the employability of foreign nationals in the United States. Before 1986, employers generally risked little when illegally hiring foreign individuals. The worst that might happen was the employer losing a worker through [deportation](#). ***Beginning in 1986, however, the worksite became an enforcement site for immigration law***, with employers required to check the work authorization of every worker they hire on pain of stiff penalties, and even criminal prosecution, for hiring workers who could not prove their eligibility to work.

While there appears to be an upward trend among churches to actively recruit foreign nationals to work in their organizations, *churches frequently have found themselves in situations where their actions “inadvertently” resulted in the hiring of a foreign national*. In a recent article on the “Requirements of Hiring Foreign Nationals at Your Church,¹” published in Church Law & Tax Report, the authors cite several common examples of how a church might get tripped up.

Example 1. A pastor, the citizen of a foreign country where he is employed as the pastor of a local church is in the United States on a visitor’s visa. He speaks at a local church and the church collects and pays the Pastor a “love offering.” The church is not sure how to handle the payment and whether or not the funds are subject to taxes and reporting to the IRS.

Example 2. A citizen of a foreign county currently living in the U.S. is hired to perform custodial services at the church. The church treasurer is uncertain how to report the income and whether the individual is even eligible to work in the United States.

Example 3. Joe is a pastor in foreign county who is currently traveling in the United States on a tourist visa. While traveling he attends an ethnic church of individuals from his native county. The church would now like to hire him as a pastor. What immigration issues are involved? Can Joe be hired while the issues are being resolved? If employed, what records will the church have to maintain after obtaining employment authorization.

In all cases where employers engage the services of individuals (no matter their nationality or citizenship) in exchange for a fee, the U.S. employer is required to make sure new hires fit into one of the four classes of legal workers:

- U.S. citizens,
- noncitizen nationals,

¹ Church Law & Tax Report, March/April 2019. Publisher: Christianity Today

- lawful permanent residents, and
- aliens authorized to work

Employers are also required to document and maintain records to show compliance with this rule. The form used for this purpose, Form I-9, can be found at the USCIS website (www.uscis.gov/forms).²

You don't actually have to know how each of these categories of legal workers is defined, because the Form I-9 instructions and the *Handbook* on the website spell out exactly what documents will count to establish employment authorization. They also make it clear that the documents to be presented is the choice of the employee, not the employer.

Discrimination in Hiring

An employer's preference for one class of legal worker over another can hurt the employer if it can be shown that such discrimination in hiring prevented an otherwise qualified individual from obtaining employment. The law obliges you to confirm that every new hire is authorized to work, but the same law prohibits you from discriminating on the basis of national origin or citizenship status. In fact, if you look at an I-9 form, the first thing your eye lights on is an "Anti-Discrimination Notice," placed at the top of the left-hand column of the "Instructions" page and boxed for emphasis. This notice warns employers against specifying which types of work authorizing documents they will accept, even if the reason for the preference is that one type has a future expiration date, and another does not.

What You Can Do If a Prospective Hire Doesn't Have Work Authorization

If a worker you want to hire doesn't have the necessary authorization, you may be able to help him or her obtain it. Then again, you may not. No standard, general-purpose work authorization exists under immigration law. What's more, the rules and procedures for obtaining work authorization for foreign workers can seem formidably complex and difficult, resting as they do on a central underlying tension between the imperative to make needed workers available to U.S. employers and the imperative to protect the wages and working conditions of the existing U.S. workforce.

Depending upon the requirements of the job you are trying to fill, the qualifications of the worker you are trying to hire, and the amount of time, money and effort you are willing to expend, you may be able to sponsor a prospective employee for lawful permanent residence in the U.S. – a "green card." (See Nolo's articles concerning "[Employment-Based Green Card Options](#).")

As previously stated, lawful permanent residents constitute one of the four classifications of legal workers in the United States. Theoretically, at least, a green card can be founded on any full-time permanent job, though the labor certification requirements imposed on most jobs and the long waiting times under the yearly quotas make the practical reality a different matter. (For a

² Accompanying the form at the website is a 69-page *Employer's Handbook* providing detailed instructions for completing the form as well as a thorough explanation of your associated legal obligations as an employer.

complete description of the employment-based green card process, see Nolo's articles concerning [“Procedures to Sponsor a Worker for a Green Card.”](#))

Alternatively, what immigration law offers you is a variety of “nonimmigrant,” or temporary visa categories authorizing a variety of specific kinds of employment for certain set periods of time. Sometimes, nonimmigrant status can actually serve more as a stepping-stone than as an alternative to the green card, allowing an employer to employ a green card candidate during the typically long time it takes to get a green card. (See Nolo's article [“Nonimmigrant Work Visa as Stepping Stone to a Green Card”](#) for more detailed discussion.)

The work-authorizing nonimmigrant visa categories cover what appears to be a broad array of kinds of work, from seasonal laborers (H-2A, H-2B) to illustrious artists, scientists, educators and businessmen (O-1); from specialized knowledge workers (E-1, E-2, L-1B), professionals (H-1B, E-3, TN), and multinational executives (L-1A) to religious workers (R-1), athletes, and entertainers (P-1, P-2, P-3, Q-1). (See Nolo's article, [“Types of Nonimmigrant \(Temporary\) Visas: Who Qualifies?”](#) for a complete listing of nonimmigrant visa categories.)

In the end, then, whether an employer can help a prospective employee get work authorization in the U.S. generally requires the help of an experienced immigration attorney.

Penalties for Hiring Undocumented Immigrants

You may be subject to civil and criminal penalties for hiring undocumented immigrant workers. Civil penalties range from a minimum of \$375 per unauthorized worker for a first offense up to a maximum of \$1,600 per worker for a third or subsequent offense. If you are found to have engaged in a “pattern and practice” of hiring undocumented workers, then you can be fined up to \$3,000 per employee and/or imprisoned for up to six months.

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