

**IDAHO INDUSTRIAL COMMISSION
POLICY AND PROCEDURE MEMORANDUM
2009-01 (Replaces 2006-01)**

TO: Rehabilitation Consultants

FROM: Mindy Montgomery, Director

DATE: February 25, 2009 (Updated June 10, 2020)

RE: **UNDOCUMENTED INJURED WORKERS**

Employers have a legal responsibility under federal law to verify that an employee is qualified to work in the state of Idaho. Rehabilitation Consultants must rely on the assumption that employers have met this legal responsibility. However, if a situation arises where an injured worker's immigration status is in question, the consultant shall follow the procedure set out below:

1. If a consultant receives information from a reasonably reliable source that indicates that an injured worker may not be properly authorized to work in the United States, i.e., is undocumented, the consultant shall immediately:

- a. inform the injured worker that it appears that the worker may not be qualified to work and, therefore, is not qualified for assistance in restoring employment by the Commission's Rehabilitation Division; and
- b. inform the injured worker that the worker has the opportunity to provide documentation to the consultant verifying eligibility to work within five (5) days of the notice of questionable status; and
- c. document the action in the file, with the information received regarding lack of authorization to work in the United States and its source; the notice, as set forth in subparagraphs (a) and (b), that was given to the worker; and the date on which such notice was given.

2. All services by Rehabilitation Consultants to restore the injured worker to employment shall be suspended immediately once the information referred to in paragraph (1) is received and the notice required by that paragraph has been given to the injured worker.

3. The Rehabilitation Consultant shall hold the file open for additional information after the notices set forth in paragraph (1) have been given and services referred to in paragraph (2) have been suspended. If the injured worker provides documentation within the five-day period to establish authorization to work under federal law, such information shall immediately be forwarded to the Director for review. If the injured worker does not provide the information within the five-day period, the file shall be closed.

4. If the Industrial Commission receives documentation from the injured worker concerning authorization to work in the United States, the Director shall report that information to Immigration and Customs Enforcement (ICE), Investigation Division, Boise (telephone no. 208-685-6674) to verify validity.

5. If the injured worker has provided documentation to show authorization to work, despite the information to the contrary received by the Rehabilitation Division, the consultant shall not resume employment assistance unless directed to do so in writing by the Director.

6. Rehabilitation Consultants must keep all file materials and information relating to immigration status of injured workers strictly confidential. Under no circumstances shall a determination of undocumented status be revealed to anyone other than the subject worker, the referring employer and authorized personnel of the Industrial Commission. Any other disclosure shall be made only in accordance with the requirements of the Idaho Public Records Law regarding workers' compensation records, specifically Idaho Code § 9-340B(10).

7. Rehabilitation Consultants shall make no reference to national origin or citizenship status in carrying out their duties for the Industrial Commission, except as required to carry out the duties set forth in this procedure.

8. The above is not new law, but is an agency interpretation of existing law. Further question may be directed to:

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