

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Department of Homeland Security Issues Interim Rule Amending Form I-9--On December 17, 2008, the Department of Homeland Security issued an interim rule (**effective February 2nd**) amending its regulations that address the types of documents and receipts that employees may present to their employers to establish their legal right to work in the United States in compliance with the Form I-9, Employment Eligibility Verification.

The interim rule provides that employees will no longer be able to present, *and employers may not accept*, expired documents to establish their employment authorization on the

Form I-9. Further, the interim rule adds foreign passports containing specially-marked machine-readable visas and documentation for certain citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) as a new document acceptable to establish both identity and employment authorization. The revised Form I-9 includes additional changes, such as revisions to the employee attestation section and includes other technical changes to update the list of acceptable documents.

Effective February 2, 2009, employers must use the revised Form I-9 for
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Illinois Appellate Court Grants Tenure to Teacher Despite Agreed Leave of Absence During Probationary Period--The Illinois Appellate Court (Fifth District) recently held that a teacher was entitled to tenure where she was employed full-time in the district for four consecutive school years, despite having taken a mutually agreed leave of absence throughout the third year of probationary employment.

In *Wood v. North Wamac School District No. 186*, No. 2008 WL 5195644 (12/11/2008), a certified teacher spent a year on paid leave due to serious injuries resulting from an automobile accident. After returning to teach full-time during her fourth year, she was sent timely written notice that she would not be reemployed for the upcoming school year, but the notice did not provide a specific reason for the decision.

The teacher sued the district and won, arguing that she satisfied the statutory requirements for tenure under Section 24-11 of the *School Code* and that the Board's notice of dismissal was defective.

While the district claimed that a teacher must actually teach throughout the probationary period of four consecutive years to attain tenure, the court held that the teacher's leave of absence
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Consumer Price Index

Percent change for the month of **December, 2008**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	-1.5	-1.8
12 Mth	-0.6	-0.9
St. Louis-6 Mth	0.4	0.2
12 Mth	2.5	2.6
U.S. Mthly	-1.0	-1.2
12 Mth	0.1	-0.5

January CPI figures will be released February 18, 2009. For the most recent CPI, visit our website at: www.hlerk.com

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- Welcome to a cold and snowy 2009! Visit www.hlerk.com for our upcoming speaking engagements including our newly scheduled Illinois Principals' Association programs on *Making Special Education Law Functional* featuring **Jay Kraning** and the rapidly approaching Illinois Association of School Personnel Administrators Conference featuring **Mike Loizzi** and **Cindi DeCola**.
- HLERK attorney **Steven Richart** has become a LEED (Leadership in Energy and Environmental Design) accredited professional. Please contact Steven with questions about your "green" building projects and guaranteed energy savings contracts.

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Illinois Appellate Court Upholds IELRB Ruling Allowing “Web Communications Assistant” and “Network Engineer” to Remain in Bargaining Unit

The Illinois Appellate Court recently held that two technology positions in a school district were properly included in a support staff union and were not “confidential employees” as defined in the *Illinois Educational Labor Relations Act*.

In *Niles Township High School District 219 v. Illinois Educational Labor Relations Board*, 2008 WL 5274327 (Dec. 15, 2008), the district argued that a World-Wide Web Communications Assistant and Systems and Networking Engineer ought to be excluded from the bargaining unit as “confidential employees,” since they had access to confidential collective bargaining information on the district’s computer systems.

Both employees performed troubleshooting of databases, had no restrictions on access to computer information and could change other employees’ passwords or access employees’ files without being detected. However, neither employee had actually seen confiden-

tial collective bargaining information in the past, and each employee had been on the job for at least five years. Based on these facts, the IELRB ruled in favor of the union, and the district appealed.

The Illinois Appellate Court allowed the technology employees to remain in the bargaining unit. The court emphasized that each case concerning technology employees must be decided on its own unique facts, and the court generally must defer to the labor board’s expertise in labor matters.

Here, the court ruled, the district had failed to satisfy its burden of showing a clear error by the labor board. Specifically, the court found, the district failed to prove that these technology employees had any regular job duties that required them to ever read or even access collective bargaining information, and neither employee had actually seen such information.

For further information on bargaining unit composition issues contact Mike Loizzi or Stan Eisenhammer.

Homeland Security Cont.

all new hires and to re-verify any employee with expiring employment authorization. The Department is accepting comments on the interim final rule on or before February 2, 2009, and may be submitted at <http://www.regulations.gov>. The current version of the Form

I-9 (dated 06/05/2007) will no longer be valid as of February 2, 2009. You may obtain a copy of the revised I-9 form from U.S. Citizenship and Immigration Services’ website at <http://www.uscis.gov>.

Please contact Cindi DeCola or John DiJohn with your immigration status inquiries.

Teacher Leave Cont.

was irrelevant under Section 24-11 because she was still a contractual employee and paid as a full-time teacher throughout the probationary period, including her period of paid leave.

The court further noted that the district’s re-hiring her after her paid leave suggested that the district held a “favorable view of her abilities and her classroom performance.” Thus, since the district’s notice at

the end of the fourth year did not contain a specific reason for the teacher’s dismissal, the court reinstated her and awarded tenure and damages for lost wages and benefits.

As school districts prepare for employee reduction or dismissal issues in the Spring, please contact Ellen Rothenberg with your RIF or employee dismissal inquiries.