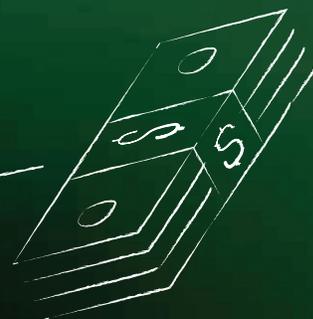


# Retaining I-9 Documentation, Rescinding a Job Offer, and Paying Bonuses and Commissions to Terminated Employees

BY RANDALL C. SCHAUER AND ALKA BAHAL



**Q. It is standard practice for us to keep copies of an employee's supporting documentation for I-9s on file. Are we potentially opening ourselves up to legal trouble by doing this?**

A. Absolutely not—so long as you apply the practice uniformly (to all employees) and retain those copies with the I-9 forms. Although it's not generally mandatory to retain copies of the supporting documents, doing so is a good policy because the existence of a legible copy of the supporting document(s) could mean the difference between a substantive violation and a technical violation if the government inspects your records.

**Q. Can an employer rescind a job offer after the offer letter has been signed?**

A. An employer would put itself at significant risk of a lawsuit were it to rescind a job offer after the offer letter has been signed. When the offer is made, signed, and accepted, a contract has been formed. Unless there is a material change in circumstance or some misrepresentation on the part of the prospective employee, an employer will be liable for damages incurred by the employee if the job offer is rescinded. Even in "at-will" relationships (in which the employee could be fired after one day), there could be claims made if an offer letter is rescinded and the employee has terminated his or her prior employment to accept the new job.

**Q. Must an employer pay out all earned sales commission to a terminated or terminating employee?**

A. Payment of wages and salary are generally governed by the terms and conditions of an employee's offer or employment agreement. If those documents define what is going to be paid to a salesperson after they are terminated—and if it includes earned commissions—those should be paid. If the offer letter or employment agreement says that no commissions will be paid after termination, that stipulation will govern. In the absence of any writings defining whether earned sales commissions should be paid after termination, generally they should be paid. However, this is an area where it is important for an employer either to define in the offer letter what is and is not paid or to use a commission plan.

We welcome your participation in the *Insights & Strategies* Q&A forum and encourage you to submit questions to [editor@mamumediallc.com](mailto:editor@mamumediallc.com). 

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