

# HR QUESTION ? of the month



## *An employee recently changed her name, when should I update her personnel records?*

**Question:** An employee recently finalized her divorce and has provided the court record with her new name. Can I change her name on her personnel records before she provides the updated social security card and other ID?

**Response:** As an initial matter and from an employment law perspective, an employer is not required to have an employee redo employment documents when the employee's last name changes, but there are certain changes that the employer may want to make as a best practice. With regard to payroll, we are not aware of any wage/hour or other employment law that would require an employer to change the employee's name so long as she is properly paid for all hours worked. That said, if the employee changes her name with the Social Security Administration, there is less chance of confusion if the employer changes the employee's name on payroll documents so that the employee's name and Social Security number will match (primarily for tax purposes).

If the employee has provided you with court documentary evidence that her name has been lawfully changed, and it is just a matter of waiting for new documentation to arrive, then we do not see any reason not to make changes internally, at least to her company email address, name plate, etc. If you need an updated Social Security card to change the W-4, then of course you must wait for that (see below for more on this).

Note that when an employee changes his or her name, the employer is not required to have the employee update the Form I-9. The USCIS addresses this on its webpage as follows: "When an employee changes his or her name (for example, when an employee marries), an employer may but generally does not need to note the name change on Form I-9. However, if the employer is completing Section 3 for reverification purposes or because the employee was rehired within three years, then the employer should: Note the name change in Section 3 of Form I-9; note the reason for the name change on the form, if the employee offers a reason for the change; and store any proof of the name change the employee may voluntarily give you with the form. There is no requirement that employees show proof of a name change for the Form I-9. When reviewing List A or List C documents in the reverification process, the employer should make sure that any document presented with a new name reasonably appears to be genuine and relates to the person presenting it." See <http://www.uscis.gov/i-9-central/complete-correct-form-i-9/complete-section-3-updating-and-reverification/completing-section-3-reverification-and-rehires> for more information.

Thus, while updating the Form I-9 is not, per se, statutorily required (nor is there is any specific time frame required), Section 3 of the Form I-9 provides a place where the employer can update and designate the employee's new name (in block A), and we recommend that the employer do so if it learns an employee has changed her name. The employer need only attach a note or copy of official documentation (i.e., marriage license or divorce decree, etc.) to support the new name that is being designated. For additional information and particularly in regards to properly reporting income and withholding taxes and other requisite deductions, you may wish to consult with a local tax professional relative to this and any other applicable tax forms (including W-4 and any state tax documents) and/or reporting obligations you may have as to an employee who experiences a legal change in name.

In addition, you may want to contact any benefit plan carriers for additional obligations to change the employee's name on related documents. The personnel file should reflect the employee's former and new name to avoid any confusion prospectively (i.e., if there are managerial changes in the future, etc., the file should make clear that the former and new name refer to one and the same person).

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