



How to Manage I-9 Compliance



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Executive Summary

Employers must use federal Form I-9, Employment Eligibility Verification, to establish the identity and employment authorization of all new employees, whether they are U.S. citizens or not.

Both employees and employers must begin the process of filling out the I-9 on a new hire's first day on the job. On the form, an employee must attest to their employment authorization. The employee must also present their employer with acceptable documents as evidence of identity and employment authorization. The employer must examine these documents to determine whether they reasonably appear genuine and relate to the employee, then record the document information on the employee's Form I-9.

Form I-9 requirements were established by the Immigration Reform and Control Act of 1986. U.S. Citizenship and Immigration Services is the federal agency that enforces I-9 compliance.

This Deep Dive Special Report will familiarize you with your responsibilities as an employer to determine the identity of new hires and verify their eligibility to work in the U.S.

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The creation of Form I-9 is one part of a patchwork effort to regulate workforce participation in a nation built in substantial measure by immigrants.

In 1986, Congress passed the Immigration Reform and Control Act, which regularized the presence of millions of immigrants and set up much of the process that today governs who can enter, stay and work in the United States. The IRCA also set in motion the roles employers now play in verifying who can legally work.

The IRCA makes it illegal for employers to knowingly hire, recruit, refer or continue to employ those not authorized to work in the United States, whether because they entered the country illegally

or their specific immigration status does not permit employment. The IRCA does this by requiring employers to have each new employee complete an I-9 form. The form is supposed to help verify the employee's status to legally work in the United States.

Employers generally have a choice in how they handle the I-9: Either fill out the I-9 form and evaluate the documents the new employee presents or use a federal government program known as E-Verify that matches a new employee's identity documents against government lists.

This report will walk you through your I-9 obligations while hiring the employees you need to run your organization.

The I-9 form

The federal agency that handles verifying authorization to work is U.S. Citizenship and Immigration Services, which is part of the Department of Homeland Security. USCIS sets the rules that enforce the immigration laws, including designing the primary document— Form I-9, Employment Eligibility Verification—that employers use to fulfill their legal obligations under those laws.

The new I-9 is a “smart” PDF document available online and featuring dropdown menus, hover text with instructions and error messages. A complete set of printed instructions is available. The form can be completed on a computer, printed and filed. It's also fine to print it out to be completed by hand.

As smart as the new I-9 is, it's not a fully electronic form. For example, the employer's representative and employee must physically sign a printed, paper document. Once completed, employers may scan the forms for electronic storage.

As always, employers are responsible for retaining completed I-9s. They are not to be submitted to USCIS or Immigration and Customs Enforcement.

Download the new I-9, read detailed instructions on how to complete it and learn more at www.uscis.gov/i-9.

Who must fill out the I-9?

All private- and public-sector employers must verify the legal status of all new hires to verify who they are and that they are either U.S. citizens or otherwise authorized to work in the United States.

Employers do not have to verify those who are:

- Employed for casual domestic work in a private home on a sporadic, irregular or intermittent basis
- Independent contractors, or who are employed by a contractor providing contract services and provide labor for you
- Not physically working on U.S. soil.

When you hire an applicant, you or another representative of the employer must sign an I-9 form attesting that you have examined appropriate documents the new hire provided that verify the applicant's identity and authorization to work in the United States. The new hire must also attest that they qualify for employment.

New employees must complete **Section 1—Employee Information and Verification** on their first day of work. Section 1 captures basic employee information and requires employees to state their citizenship or immigrant status.

Employers must complete **Section 2—Employer Review and Verification** within three business days of the date employment begins. Section 2 records the identification and work eligibility documentation the employee presents. Although verification must be done within three days of hire, it could be extended to 90 days if the employee presents a receipt proving that an application for replacement of an authorization document has been filed. That could happen, for example, if the employee's document was recently lost, stolen or expired.

If employees are hired for fewer than three days, Sections 1 and 2 of the I-9 form must be completed at the time of hire.

I-9 documents

The verification process requires the new hire to review a list of documents and choose which to produce. The employer must determine if the documents are the right ones. Review one document from List A or one original document from each of Lists B and C. The lists appear on the back of the I-9:

- **List A** documents show a person's identity and demonstrate their authorization to work in the United States.
- **List B** documents show a person's identity.
- **List C** documents establish a person's right to work.

Employers can't accept expired documents for proof of identification or work authorization. You must use the latest I-9 form for any reverifications you may have to do for employees who aren't citizens or permanent residents.

Employers are essentially asked to verify that the new hire is who they claim to be and is legally authorized to work in the United States. For many new hires, this will be fairly simple as they will have one document proving both. For others, it may be a bit more complicated and require them to present two separate documents, one that proves identity and one that proves the legal right to work.

Caution: It is the new hire's choice as to which documents they present. Employers can't insist that the new hire provide a specific document like a current passport. If the document or documents are on the list and the new hire presents them, you must accept them. Of course, you still have an obligation to verify that they are genuine.

Fortunately, USCIS I-9 document instructions include lists that help employers easily verify identity and work authorization. Here's how it works.

Documents from List A

List A documents show a person's identity and demonstrate their authorization to work. In the case of less common ones, make sure the document has the right form number listed. New hires may choose to present one document from this list. If they do, they do not need to provide any other documents.

- U.S. passport or U.S. passport card
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa
- Employment Authorization Document that contains a photograph (Form I-766)
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form
- Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

Documents from List B

List B documents show a person's identity. A new hire may choose any one document from this list to prove they are who they say they are:

- Driver's license or ID card issued by a state or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address
- ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address
- School ID card with a photograph
- Voter registration card
- U.S. military card or draft record
- Military dependent's ID card
- U.S. Coast Guard Merchant Mariner Card
- Native American tribal document
- Driver's license issued by a Canadian government authority.

If the new hire is under age 18 and does not have an ID from the above list, they may use a school record or report card; a clinic, doctor or hospital record; or a day care or nursery school record.

Documents from List C

List C documents establish the right to work in the United States. Because there are so many different visas and work permissions, based on unique circumstances, the list is quite long:

- Social Security card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
- Certification of Birth Abroad issued by the Department of State (Form FS-545)
- Certification of Report of Birth issued by the Department of State (Form DS-1350)

- Original or certified copy of birth certificate issued by a state, county, municipal authority or territory of the United States bearing an official seal
- Native American tribal document
- U.S. citizen ID card (Form I-197)
- Identification Card for Use of Resident Citizen in the United States (Form I-179)
- Employment authorization document issued by the Department of Homeland Security.

The last document can be any of a lengthy list of visas and work permits, including documents like work authorization cards issued under the Deferred Action for Childhood Arrivals program or special work permits issued for asylum seekers, refugees and foreign victims of trafficking, among others. These documents will always be clearly labeled and come from DHS.

The employer's role

Your role as an employer is to review the documents the new hire chooses to present from the lists and determine whether they appear genuine and the new hire is the person those documents reference. You are not required to be an expert in forgery, but you must turn a critical eye to obvious problems with documents.

To help employers examine documents, DHS provides numerous examples of how documents should look on its website. You can access the images here: <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents>. Once you have determined that the documents look genuine, you can fill out the employer's section of the I-9 and attest to your conclusions.

As an additional measure, you may want to follow up when the employee who was interviewed and hired begins work to make sure they are the same individual. It is not unheard of for the worker who shows up to not be the person who presented the documents.

I-9 reverification

Some work authorizations don't ever expire, but many do. When a work visa expires, the worker is no longer authorized to work in the United States. However, even if a U.S. passport has expired, the work authorization that goes along with citizenship does not expire. That would require the U.S. government to revoke the individual's citizenship, a rare occurrence reserved for those who became naturalized under fraudulent circumstances or for whom a passport was issued in error.

Employers never need to reverify work authorization for U.S. citizens and permanent residents, even when documents expire. That's because their work authorization is permanent.

Non-citizen employees on most work visas must be reverified. Employers must review visa-holders' files to determine if their I-9 documents expired. Employers should do this initially and develop a tickler-file system for requesting updated documentation before the documents expire.

Which form to use to rehire or reverify

You may use Supplement B, Reverification and Rehire of the Form I-9, or, if Supplement B has already been used for a previous reverification or update, use a new Form I-9. The employee must present a document that shows either an extension of the employee's initial employment authorization or new work authorization.

If the employee cannot provide proof of current work authorization (e.g., any document from List A or List C), you cannot continue to employ that person. (Note: List B identity documents, such as a driver's license, should not be reverified when they expire.)

The employee does not have to provide you with the same document or documents they used previously if the documents presented are listed on the back of the I-9 and either verify identity

and work authorization on their own or two separate documents establish identity and work authorization.

You must reverify an employee's employment eligibility no later than the date the employee's work authorization expires.

When you rehire a former employee, you must ensure that he or she is still authorized to work. You may do this by completing a new Form I-9 or by completing Supplement B to reverify or update the original form.

If you rehire an employee within three years of the initial date of hire and the employee is still eligible to work on the same basis as when the original Form I-9 was completed, you may update the employee's original Form I-9 or complete a new Form I-9.

Updating

To update, you must:

- 1.** Record the date of rehire
- 2.** Sign and date Supplement B
- 3.** Write the employee's name in Section 1 if using a new Form I-9.

Reverifying

If you rehire the employee within three years of the initial date of hire and the employee's previous grant of work authorization has expired, but he or she is currently eligible to work on a different basis or under a new grant of work authorization than when the original Form I-9 was completed, you may reverify the employee's original Form I-9 (or a new Form I-9 if Supplement B of the original has already been used).

To reverify, you must:

- 1.** Record the date of rehire/reverification

2. Record the document title, number and expiration date (if any) of any document(s) presented
3. Sign and date Supplement B
4. Write the employee's name in Section 1 if using a new Form I-9.

Name changes

Technically, you are not required to update Form I-9 when your employee has a legal name change following a marriage, divorce or other court action. However, it makes sense to have the information match. You can use Supplement B to make the change.

If an employee informs you that their name, date of birth or Social Security number is substantially different from what they previously provided on Form I-9, but they are unable to provide evidence linking the new information to the previous identity, you should complete a new Form I-9. In doing so:

- Write the original hire date in “The employee’s first day of employment” in Section 2
- Attach the new Form I-9 to the previously completed Form I-9

If the Section 1 information has not substantially changed but the employee has offered different evidence of work authorization, you should examine the documentation to determine whether it appears to be genuine and to relate to the person presenting it. If so, complete Supplement B of the previous Form I-9. If the current version of Form I-9 differs from the previously completed Form I-9, you must complete Supplement B on the current version.

E-Verify, the electronic I-9 system

An alternative method for completing the I-9 is the federal E-Verify system, which allows employers to file I-9 information online. Employers can voluntarily use E-Verify to check the work-eligibility status of new employees. Currently, only the federal government and employers holding federal contracts worth more than \$100,000 are required to use E-Verify.

Learn more about E-Verify at **www.e-verify.gov**.

DHS offers an incentive for employers to use E-Verify. Instead of extending the temporary remote examination process used during the COVID-19 pandemic to all employers, DHS chose to limit continued remote verification to employers that agree to use E-Verify.

The new verification for E-Verify participants requires a live video link connecting the employee with their work authorization and identity documents and a remote company representative. Before the video-link meeting, the employee must send a copy (showing the front and back) of the document or documents they plan to use to prove identity and work authorization. The employer compares the copies to the document the new employee displays during the video-link session to make sure they appear genuine and belong to the new employee. The employer retains a copy of the documents and checks the box on the I-9 that indicates that they were examined via video link.

If you participate in E-Verify in good standing, you are qualified to remotely examine your employee's documentation using a DHS-authorized alternative procedure at your E-Verify hiring sites. If you choose to offer the alternative procedure to new employees at an E-Verify hiring site, you must do so consistently for all employees at that site. However, you may choose to offer the alternative procedure for remote hires only and continue to apply physical-examination procedures to all employees who work onsite or in a hybrid capacity, as long as you do not adopt such a

practice for a discriminatory purpose or treat employees differently based on their citizenship, immigration status or national origin, such as by deciding that certain employees are not eligible for remote examination of their documentation.

The employer must, of course, also run the new employee's information through the E-Verify system to confirm work eligibility.

Note: State law requires all employers to use E-Verify in the following states: Alabama, Arizona, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Utah. Another handful of states only require public employers to use E-Verify. Any employer may voluntarily use the E-Verify system.

How E-Verify works

The web-based system allows employers to confirm that newly hired workers are eligible to work in the U.S. by matching information they provide on the I-9 form against existing Social Security and DHS records.

- **What E-Verify does.** Employees participating in E-Verify must still fill out the I-9, then use the system to confirm employment eligibility. Employers input information from Sections 1 and 2 along with the new employee's Social Security number. The system then either confirms legal work authorization or signals a mismatch. In the case of a mismatch, you will receive a form to give the employee so they can contact DHS or the Social Security Administration to resolve the mismatch. Employees have 10 days to do that.
- **E-Verify obligations.** Employers that sign up must use the system for all new hires regardless of citizenship status. Employers must wait until they have hired an applicant and cannot use E-Verify to pre-screen legal work authorization. Nor can they fire a worker because of a mismatch until the employee has a chance to resolve it. If they do not, the E-Verify system will issue a Final Nonconfirmation. The employer must then terminate the worker.

The biggest advantage of using E-Verify is that the federal government becomes your partner in completing your I-9 forms. A suspicious match doesn't become your problem to solve. Instead, the new hire must rectify and correct the information to retain their job. You may even find that if you make it clear that your organization uses E-Verify, would-be applicants with suspect documentation are far less likely to apply for a job. It also becomes much less likely that a rogue hiring manager willing to ignore someone's legal status to fill the job will put your company at risk for a federal investigation, criminal and civil fines and imprisonment.

It is worth remembering that every recent administration has cracked down on employers that have allowed those without authorization to work. The focus may change, but the danger remains that authorities will conduct raids, make arrests and levy huge fines for I-9 and immigration violations.

In addition, the Department of Labor has been cracking down on illicit child labor following an embarrassing exposé of hiring practices that indicated employers were ignoring obvious problems in their I-9 processes. One case involved hiring managers who interviewed applicants and examined documents that appeared to be genuine and identified both the individual presenting documents and their work authorization. Then, when the new hire showed up to begin work, there were obvious clues that this was not the same person who completed the I-9 process but was instead a child. Using the E-Verify program makes this much less likely, as the original adult-appearing applicant who likely was using counterfeit documents would not have passed the E-Verify review.

Signing up for E-Verify

Before you enroll in E-Verify, use this checklist to help you prepare. Decide:

- ✓ Who will electronically sign the E-Verify memorandum of understanding on behalf of your company (reproduced later in this document)?
- ✓ Which hiring sites will participate in E-Verify?

- ✓ If you are a federal contractor with the FAR E-Verify clause, which employees will you verify?
- ✓ Which company location(s) will access E-Verify?
- ✓ Who in your company will have access to E-Verify?
- ✓ Who in your company should be a program administrator?

Finally, review the system requirements. **www.e-verify.gov/employers/enrolling-in-e-verify/system-requirements**.

To enroll, you will need to know:

- Contact information for your company's E-Verify memorandum of understanding signatory (name, phone number, fax number and email address)
- Company name
- "Doing business as" name (optional)
- Data Universal Numbering System (DUNS) number (optional)
- The physical address of the location from which your company will access E-Verify (including county)
- Company mailing address (if different from the physical address)
- Employer Identification Number (also called a Federal Tax ID Number)
- Total number of employees for all of your company's hiring sites that will participate in E-Verify
- Parent organization (optional)
- Administrator name for the E-Verify corporate account (optional)
- The first three digits of your company's primary North American Industry Classification System (NAICS) code
- The number of hiring sites that will participate in E-Verify in each state.

For all registered E-Verify users, you must be ready to provide:

- Name
- Phone number
- Fax number (optional)
- Email address

Deferred Action for Childhood Arrivals

In 2012, the Obama administration created the Deferred Action on Childhood Arrivals (DACA) program via executive order to provide protection from deportation to adults who came to the United States without authorization when they were young children. These individuals grew up in the United States, having known no other home. Some did not even realize they were not legally authorized to live or work in the U.S. until they applied for their first job or went to college.

A crucial feature of the DACA program is that DHS could issue renewable work-authorization documents to individuals who could show they had resided in the country since childhood and had stayed out of criminal trouble. The work authorizations were renewable every two years and came with continued deportation deferral as long as the individual stayed out of trouble.

Since its inception, the DACA program has been in litigation. The program remains in limbo, but DACA permit holders who have not had their permits lapse for a year or more can continue to renew them. A DACA permit can be used as a valid work authorization under the I-9 system as long as it is valid when the person is hired and the employee continues to renew the document regularly.

The most recent DACA-related court action occurred in November 2023, when the 5th Circuit Court of Appeals ruled that the latest version of DACA—the Biden administration's final regulations formalizing the program administratively—was unconstitutional.

While a final decision is pending, DHS is still renewing permits but not issuing new ones for those applying for the first time.

Ultimately, until Congress acts on immigration, the fate of those protected by DACA remains subject to the whims of the U.S. court system. The chances of passing legislation on such a contentious topic are doubtful.

Employers should keep a close eye on this topic as the current challenge moves through the court system.

Potential I-9 liability: National-origin bias claims

Given that the federal government has essentially deputized employers as immigration law enforcement officers, it may seem contradictory that federal immigration laws make it illegal to discriminate on the basis of national origin.

For example, the IRCA prohibits employment discrimination based on national origin and citizenship status. An employer cannot request more or different documents than required to verify status, nor can it refuse to accept documents that “reasonably appear to be genuine.”

Other signs of discrimination include asking employees with a foreign accent to prove U.S. citizenship but sometimes waiving this procedure for other employees, and photocopying some applicants’ documents but not others. It is also discriminatory to threaten, intimidate or retaliate against a person who has filed or plans to file a discrimination charge.

The U.S. Department of Justice has been aggressive about enforcing the nondiscrimination provisions of the IRCA and has negotiated large settlement payments from employers that have attempted to limit employment opportunities only to U.S. citizens.

Frequently asked questions

Here are some frequently asked questions we have received about completing Form I-9.

Q Must employers complete an I-9 form for everyone who applies for a job?

A No. Employers need to complete the I-9 form only for people they hire. For purposes of I-9 compliance, a person is hired when he or she begins work for wages or other compensation.

Q Is an employer responsible for knowing whether the documents shown for the I-9 are falsified?

A The general rule of thumb is that employers must make reasonable efforts to ascertain the legitimacy of such documents. But if later events reveal fraud on the part of the employee, the employer is not automatically liable.

Employers can fall into several other traps where I-9 documents are concerned. You must check the applicable documents for proof within three days of employment or obtain receipts showing the applicant has applied to obtain the proper documents.

You must also accept any document or combination that the Immigration and Naturalization Services has deemed acceptable. That is, you can't demand more than the law demands. You also must review original documents. If, however, a birth certificate is used as List C documentation, a certified copy bearing an official seal is allowable.

The employer is responsible for making sure the I-9 form itself is completely filled out, including the employee's section. You should keep track of expiration dates on all documents so you're not caught with your guard down at a later date.

Q Can I limit hiring only to U.S. citizens?

A Employers cannot limit positions to U.S. citizens only unless they are required to do so by a law, executive order, regulation or government contract that requires specific

positions to be filled only by U.S. citizens. If a job applicant is discouraged or rejected from employment based on citizenship status, the employer may be committing citizenship-status discrimination in violation of the anti-discrimination provision of the *Immigration and Nationality Act*.

Q Can I refuse to hire someone based on national origin?

A Failing to hire someone based on their national origin may violate the anti-discrimination provision of the INA if the employer employs four to 14 employees. It may violate Title VII of the Civil Rights Act if the employer has 15 or more employees.

Q Can we fire an employee who fails to produce a required document within three business days?

A Yes. Employers can terminate an employee who fails to produce required documents or a receipt for a replacement document (in the case of lost, stolen or destroyed documents) within three business days of the date of hire. Employers must apply these practices uniformly to all employees. If an employee presents a receipt for a replacement document, he or she must produce the actual document within 90 days of the date of hire.

Q Should I make copies of authorization documents?

A If you participate in E-Verify and the employee presents a U.S. passport or passport card, Permanent Resident Card (Form I-551) or Employment Authorization Document (Form I-766), you must retain a photocopy. If you do not participate in E-Verify, you are not required to make copies of documents. However, if you wish to make photocopies of documents other than those used in E-Verify, you must do so for all employees. Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of Form I-9, nor is it an acceptable substitute for proper completion of Form I-9 in general.

Q How do I correct a mistake on an I-9?

A If you find a mistake on an employee's Form I-9, you must have the employee correct the errors in Section 1. Employers must make corrections in Section 2.

To correct Form I-9, draw a line through the portions of the form that contain incorrect information and then enter the correct information. Initial and date your correction. If you have previously made changes on Form I-9 using correction fluid, USCIS recommends that you attach a note to the corrected Form I-9 explaining what happened. Be sure to sign and date the note.

Access more helpful tools and articles at
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