

# Form I-9

## HR Toolkit

Provided by: **The Timberland Group**



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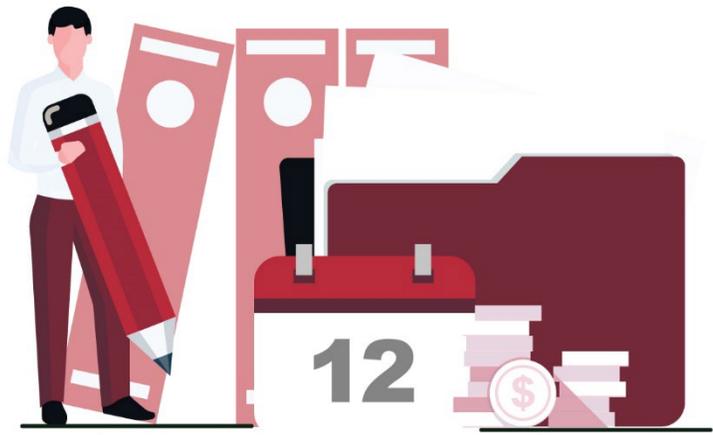
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# Introduction

Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or authorized foreign nationals. To comply with the law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification form (Form I-9). Employers must have a completed Form I-9 for every employee hired after Nov. 6, 1986.



In recent years, the federal government has increased its enforcement efforts. Many experts believe this trend will continue for the foreseeable future, increasing employers' potential risk for noncompliance. By completing Form I-9, employers are certifying they have inspected documents verifying that a newly hired employee is authorized to live and work in the United States. However, complying with Form I-9 requirements accurately and in a timely manner is not only difficult but tedious. The risk employers face for errors is real and can be extremely expensive. Employers who fail to comply with Form I-9 requirements can face severe consequences, including civil and criminal penalties. As such, compliance is becoming an area of increased focus for employers.

Employers tend to spend a great deal of time and money trying to comply with Form I-9 requirements. Despite employers' best efforts, compliance with federal law can be complex and is rarely foolproof. Employers can rely on vendors to assist and even improve their Form I-9 compliance, but these services are often expensive, and employers are still liable for any mistakes. In an effort to reduce exposure to violations, penalties and fines, some employers enroll in E-Verify. This voluntary web-based system was implemented by the U.S. government to enhance the enforcement of federal immigration law. It allows employers to quickly and easily confirm an employee's employment eligibility.

Employers can use this HR toolkit to establish procedures, help achieve Form I-9 compliance, better understand the legal and regulatory landscape, reduce the risk of audits and fines, and explore options to improve Form I-9 efficiency. It offers an overview of Form I-9, including its various sections, and explores workplace strategies that employers can implement to properly complete, manage and retain Forms I-9 and to avoid fines and penalties. Additionally, this HR Toolkit provides guidance to employers using vendors or implementing E-Verify to assist with their Form I-9 compliance and addresses recent changes due to COVID-19.

This HR Toolkit provides a broad overview of Form I-9 and should not be construed as legal advice. Due to the complex nature of Form I-9, employers are encouraged to seek legal counsel to discuss and address specific concerns or issues.

## Form I-9 Overview

Under federal law, every employer that recruits, refers for a fee or hires an individual for employment in the United States must complete a Form I-9 for that individual. For most employers, completing Forms I-9 is a key HR function. Typically, HR professionals do this as part of an organization's onboarding process. Compared to other onboarding tasks, Form I-9 is unique in that employers must complete this process for every employee in the United States within a very short timeframe and in a specific way, regardless of an employer's size. This task is a heavy burden for employers and HR professionals; complying with all Form I-9 requirements can be complicated and time-consuming. Form I-9 has multiple sections that both the employer and employee must complete within a limited time frame. Employers must physically examine and verify an employee's identity and employability from a list of approved documents. Employers are also required to maintain and retain all Forms I-9 for a specific time period and reverify an employee's documentation when it expires or if an employee is rehired within three years of when their Form I-9 was initially completed.

This section provides an overview of Form I-9 and its different sections, an explanation on how and when to complete each section of the form, and a discussion of the new Form I-9.

### What Is Form I-9?

The Immigration Reform and Control Act (IRCA) took effect in 1986 to prevent the employment of people living in the country illegally. The IRCA requires employers, regardless of size, to hire and retain only individuals authorized to work in the United States and imposes strict penalties on those that knowingly employ immigrants lacking permanent legal status. To enforce these guidelines, the IRCA requires employers to verify a newly hired employee's eligibility to work in the United States by completing Form I-9. By completing this form, employers are certifying that they have inspected documents verifying that a newly hired employee is authorized to live and work in the United States.

Employers must make Form I-9's instructions and List of Acceptable Documents available to their employees. All employees must provide original documents that verify their right to live and work in the United States for physical examination and sign a verification form (Form I-9). If an employee cannot verify their right to work within three business days of their first day of work for pay, the employer must not permit that individual to work and can terminate the individual's employment or place them on unpaid leave. Employers may also be required to reverify an employee's employment eligibility under certain circumstances. Employers are permitted to retain and sign Forms I-9 electronically. Additionally, the U.S. Department of Homeland Security's (DHS) E-Verify system allows participating employers to electronically verify the employment eligibility of new hires.

DHS occasionally revises Form I-9. Employers are required to use the current version of the form for new hires and the reverification of employees. On Jan. 31, 2020, U.S. Citizenship and Immigration Services (USCIS), part of the DHS, issued an updated version of Form I-9, which expires on Oct. 31, 2022. Employers can find the most current Form I-9 on the [USCIS website](#).

Only employers and employees in Puerto Rico can complete the [Spanish language version of Form I-9](#). Spanish-speaking employers and employees outside of Puerto Rico must complete the form in English to meet employment eligibility verification requirements, but they may use the Spanish language version of the form for reference.

## Completing Form I-9

Form I-9 has three sections: the first is completed by the employee; the second is completed by the employer; the third is completed only when rehire, reverification or name changes apply.

The earliest an employer can ask a new hire to complete Section 1 of Form I-9 is after an offer of employment is extended and accepted. Employers cannot use Form I-9 as part of an applicant's screening process or background check. The latest a new hire can complete Section 1 is at the end of the employee's first day of work for pay.



If an employee's employment is set to last fewer than three business days, Sections 1 and 2 must be completed before the employee's first day of work for pay.

Employers do not have to verify employment for individuals hired prior to Nov. 7, 1986. Employees—including any individuals working in the United States illegally—have grandfathered status if their employment started prior to Nov. 7, 1986, and continues. Employment “continues” when an employee transfers within a company to another location, returns from an approved paid or unpaid leave of absence, is recalled from a layoff that did not result in termination or is employed by a related or successor employer. Individuals lose their grandfathered status when they are lawfully terminated by their employer, quit or do not have a reasonable expectation of reemployment.

Employers can hire an outside business or contractor to verify a newly hired employee's identity and employment eligibility, but the employer is ultimately responsible for the business's or contractor's actions and the employee's employment eligibility.

State employment agencies can complete Forms I-9 for individuals they refer for employment. Agencies that do so must issue an employment eligibility certificate to the employer within 21 days of the date the referred individual is hired. Instead of completing a new Form I-9, the employer can rely on this certificate from the state employment agency if the employer properly retains appropriate documentation of the certificate confirming the employee's employment eligibility.

### Section 1: Employee Information and Attestation

Section 1 must be completed by the newly hired employee. They provide certain personal information, such as their name, address, date of birth and contact information. Under the penalty of perjury, the employee also selects whether they are a U.S. citizen, noncitizen, lawful permanent resident or “alien” authorized to work, as termed by the USCIS. A preparer or translator may help a newly hired employee complete this section, but they must complete the certification box in Section 1.

Newly hired employees must complete and sign Section 1 no later than their first day of employment. Employers may have an employee complete Section 1 on the first day of employment or before the first day of work if they have offered the individual a job and the prospective employee has accepted it.

Employees must supply original, unexpired documents verifying their identity and employability from the List of Acceptable Documents approved by the USCIS. Employers may only accept documents from Lists A, B and C. Documents from List A establish identity and employment eligibility, documents from List B establish identity only and documents from List C establish employment eligibility only. Employers must accept either one document from List A or a combination of one document from List B and one document from List C.

Employers are responsible for reviewing and ensuring that employees fully and properly complete Section 1. However, employers cannot dictate or request that employees provide specific documents from the List of Acceptable Documents. Penalties may apply for accepting or requesting documents that are not on these lists.

## List A:

### Documents Establishing Identity and Employment Eligibility

- U.S. passport or U.S. passport card
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
- Unexpired foreign passport containing a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigration visa
- Unexpired Employment Authorization Document containing a photograph (Form I-766)
- For a “nonimmigrant alien” as termed by the USCIS, authorized to work for a specific employer because of their status:
  - Unexpired foreign passport; and
  - Unexpired Arrival-Departure Record (Form I-94 or Form I-94A) bearing the same name as the passport and containing an endorsement of the alien’s nonimmigration status as long as that 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 issued from the Federal State of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with a valid Form I-94 or I-94A indicating nonimmigration admission under the Compact of Free Association Between the United States and the FSM and RMI

### **List B: Establishing Identity Only**

- Driver's license or identity card issued by a state or outlying possession of the United States containing a photograph or information such as name, date of birth, gender, height, eye color and address
- Identification card issued by federal, state or local government agencies or entities containing a photograph and name, date of birth, gender, height, eye color and address
- School identification card with a photograph
- Voter's registration card
- U.S. military card or draft record
- Military dependent's identification card
- U.S. Coast Guard Merchant Mariner Card
- Native American tribal documents
- Canadian driver's license
- Individuals under 18 who are unable to present a documented listed above can present one of the following:
  - School record or report card
  - Clinic, doctor or hospital record
  - Day care or nursery school record

### **List C: Establishing Employment Eligibility Only**

- U.S. Social Security number card issued by the Social Security Administration unless the card includes one of the following restrictions:
  - Not valid for employment
  - Valid for work only with U.S. Immigration and Naturalization Service authorization
  - Valid for work only with DHS authorization
- Certificate of birth abroad issued by the Department of State (Form FS-240, FS-545 or DS-1350)
- Original or certified copy of a birth certificate issued by the state, county, municipal authority or outlying possession of the United States bearing an official seal
- Native American tribal document
- U.S. Citizen Identification Card (Form I-197)
- Identification Card for use of a resident citizen in the United States (Form I-179)
- Unexpired employment authorization document issued by DHS

Employers need to note whether employees indicate in Section 1 that their employment authorization documentation will expire, as this may mean that reverification will be required at a later date.

## **Section 2: Employer or Authorized Representative Review and Verification**

Employers must complete and sign Section 2 within three business days after the employee's first day of work for pay. For example, if the employee started work for pay on Monday, the employer must complete Section 2 by Thursday of that week. Employers fill out this section using the information provided in the documents presented by the employee to prove their identity and employment eligibility in the United States.

To complete Section 2, employers must verify specific documents listed in the form. Reviewing these documents allows an employer to verify their new employee's identity and employment eligibility. Employers must document their review and verification of these documents on the form. A list of acceptable documents and a combination of documents can be found on Page 3 of the form. Employers cannot dictate which documents an employee chooses to present.

Employers, or their authorized representative, must:

-  Ensure that any document the employee presents is on the List of Acceptable Documents or is an acceptable receipt
-  Physically examine each document to determine if it reasonably appears to be genuine and to relate to the employee presenting it—if employers reject a document, they must allow the employee to present other documentation from the List of Acceptable Documents
-  Enter the employee's last name, first name and middle initial (if provided) from Section 1
-  Record the document title, issuing authority, number(s) and expiration date (if any) from the original document(s) the employee presented
-  Enter the date the employee began or will begin work for pay
-  Provide the name, signature and title of the person completing Section 2, as well as the date they completed Section 2
-  Record the employer's business name and address—if the employer has multiple locations, they can use the most appropriate address that identifies the location of the employer with respect to the employee and their completion of Form I-9 (e.g., the address where Form I-9 is completed)
-  Return the documentation presented to the employee

The person who physically examines the employee's documents must sign the attestation in Section 2 under the penalty of perjury.

Due to the COVID-19 pandemic, the DHS adopted a temporary policy allowing employers to accept expired List B documents when verifying an employee's identity. On May 1, 2022, the DHS ended the COVID-19 Temporary Policy for List B Documents. Employers may no longer be able to accept expired List B documents. If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, and the employee is still employed, employers needed to have had the employee present an unexpired document that establishes their identity by July 31, 2022. The document could be the renewed

List B document, a different List B document or a document from List A. If the List B document was automatically extended by the issuing authority, employers do not need to take any action because the document was unexpired when presented by the employee. Employers do not need to take any action if the employee is no longer employed.

Employers may use an authorized representative to complete Form I-9 verification for new hires working remotely. This can be a personnel officer, agent, foreman, bank representative or notary public. If the employer authorizes a notary public as its representative, the notary public is acting as an authorized representative of the employer, not as a notary public. When acting as an authorized employer representative, the notary public should not provide a notary seal on Form I-9. Due to the COVID-19 pandemic, the DHS implemented temporary flexibilities for employers operating remotely to conduct remote verification of an employee's approved Form I-9 documents until Oct. 31, 2022. This is discussed in more detail [below](#).

Employers may terminate any employee who cannot present the necessary documents within three business days of hire or place them on an unpaid leave of absence. If an employer chooses to place an employee on an unpaid leave of absence, the employer can terminate the employee if they are unable to produce identity and employability documents at the end of their leave.

### **Section 3: Reverification and Rehires**

When an employee's employment authorization has expired, employers must complete Section 3. Employers also use Section 3 for rehired employees if the rehire took place within three years of when Form I-9 was initially completed and the employer still has the previously completed form.

Section 3 of Form I-9 has three blocks—A, B and C— employers must complete when reverifying an employee's work authorization or rehiring an employee. Employers should complete these blocks as follows:

- **Block A**—New Name. This section needs to be completed if an employee's name has changed from what was on the previously completed Form I-9.
- **Block B**—Date of Rehire. This section needs to be completed if the employee is rehired within three years of when the form was originally completed. Employers must enter the date the employee is rehired in this block.
- **Block C**—Employment Authorization. This section is to be completed if the employer is reverifying an expired or expiring employment authorization document of a current or rehired employee. Employers must enter the information from List A or List C documents that the employee presents to reverify their employment authorization.

Employers must reverify an employee's work authorization document if it has an expiration date. Employers do this by examining a new work authorization document and completing Section 3. For current employees whose work authorization is about to expire, employers must complete Block B and examine a document—from List A or C—that verifies the employee's authorization to work in the United States; complete Block C with the document's title, number and expiration, if any; and complete the signature block. If employers have previously completed Section 3, they can complete Section 3 on a new Form I-9—using the most current version—and attach it to the previously completed form. If employers

fail to reverify an employee's work authorization document, they may be subject to penalties and fines for knowingly employing an individual who is not authorized to work in the United States. Employers should ensure the employee's new document is acceptable and authentic.

Employers must reverify the employee's employment authorization on or before the expiration date provided in Section 1. If the employment authorization expiration date provided in Section 1 does not match the date recorded by the employer in Section 2, the employer should use the earlier date to determine when reverification is necessary.

In some situations, reverification is not required or subject to special rules, including:

- **Identity, citizenship and residency documents**—Reverification is not required for identity documents, U.S. citizenship documents and permanent residency cards. Moreover, employers do not need to reverify U.S. passports, alien registration or permanent resident cards, whether valid or expired. U.S. citizens and lawful permanent residents are permanently authorized to work in the United States. Accordingly, employers do not need to reverify their documents.
- **Foreign workers with temporary work authorization**—Foreign workers whose work authorization is temporary must be reverified on or before the expiration date of their work authorization document. If employers fail to do so, the employee cannot continue to work and may be terminated or placed on a leave of absence.
- **Employee name changes**—If an employee changes their name, employers must record the employee's name change on the new work authorization document during the reverification process. However, if an employee changes their name for personal reasons—such as marriage—employers are not required to update the employee's Form I-9, but may.
- **Federal contractors**—Federal contractors subject to the Federal Acquisition Regulation (FAR) E-Verify clause have special rules regarding when they must complete new Forms I-9 for existing employees. If a federal contractor subject to the FAR E-Verify clause chooses to verify existing employees by updating existing Forms I-9, they must submit a new Form I-9 when an employee changes their name.

Employers must complete Section 3 when updating or verifying the rehired or seasonal employee's eligibility and authorization to work in the United States. If employers rehire an employee within three years of the date of the previous form, they may either complete a new Form I-9 or complete Section 3 of the previously completed form. If an employee is rehired after three years of the date of the original Form I-9, the employer and employee must complete a new Form I-9.

The following are guidelines for completing Section 3 for rehired or seasonal employees:

- If the employee is still authorized to work, employers must:
  - Enter the employee's full name from the original Form I-9 at the top of Section 3.
  - Enter any name change in Block A.
  - Enter the employee's rehire date in Block B.

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- Enter the name of the employer’s representative completing Section 3 along with their signature and the date.
- If the employee’s work authorization has expired, employers must:
  - Enter the employee’s full name from the original Form I-9 at the top of Section 3.
  - Enter any name change in Block A.
  - Enter the employee’s rehire date in Block B.
  - Examine the employee’s work authorization documentation and enter the document’s title, number and expiration, if any, in Block C.
  - Enter the name of the employer’s representative completing Section 3 along with their signature and the date.

If the originally completed Form I-9 has been replaced by a new version of the form, the employer and employee must complete a new Form I-9. This includes having the employee present documents from the current List of Acceptable Documents. The employer can store the employee’s completed current version of the form with the previously completed form.

### **New Form I-9**

The current Form I-9 expires on Oct. 31, 2022. The DHS plans to replace the current form with an updated version. While the DHS has yet to confirm the changes to be included in the updated form, it has announced several proposed changes, including:

- Condensing Sections 1 and 2 to a single page
- Creating a separate stand-alone Reverification and Rehire Supplement for Section 3
- Updating the List of Acceptable Documents to include a link to the USCIS’s website for List C documents
- Simplifying and reducing the form’s instructions from 15 pages to 7 pages
- Removing electronic PDF enhancements, so the form can be completed on all electronic devices

The DHS’s proposed changes aim to reduce paper use, provide clarity and improve usability for both employers and employees. This means employers may have to train HR representatives and other employees and adapt their Form I-9 process to conform to the new form. Employers need to follow the DHS’s rule-making process closely for any updates.

# Managing the Form I-9 Process

Managing an organization's Form I-9 process is difficult and laborious. Employers must juggle many complex and time-sensitive tasks and responsibilities. Even when done effectively, complying with Form I-9 requirements is often time-consuming and costly, and organizations cannot completely eliminate errors or risks of audits, fines and penalties. Employers must consider the best way to manage all aspects of their Form I-9 process focusing not only on compliance but also efficiency. This section will address managing an organization's Form I-9 process, including onboarding, maintaining and retaining forms, reverifying an employee's documentation, making corrections, verifying employees remotely, using software and vendors, and addressing situations when employees do not have valid documents.

This section is not intended to provide or be a substitute for legal advice. Employers may consider consulting with an attorney to review their Form I-9 procedures and completed forms to ensure they comply with federal law.

## Organizational Cost of Form I-9 Operations

Even though employers spend much time and money complying with Form I-9 requirements, the actual cost of their Form I-9 process may not be readily apparent. As a result, employers tend not to understand the true cost of the process for their organization and do not give it the appropriate time, consideration and attention it requires. For example, employers rarely consider the time or financial impact of the administrative aspects of their Form I-9 process. If asked, most employers probably could not account for the time they spend completing Sections 1 and 2 of the form for each new hire. In addition to completing the form for each new hire, organizations typically spend time addressing reverifications, name changes, correcting forms, purging old forms and answering employee questions.

Despite the time and money organizations spend on the Form I-9 process, there's often a surprising number of errors on any given completed form. However, it's virtually impossible to eliminate all errors and risks, even for the most compliant employers.



Between 60% and 80% of all completed Forms I-9 contain at least one error, according to Jackson Lewis, P.C.

Fines for even the simplest of mistakes can add up quickly and potentially cripple an organization financially.

For organizations trying to understand the true cost of their Form I-9 process, they can start by analyzing the total cost of ownership (TCO). TCO enables organizations to understand what they are actually spending on a process, such as their Form I-9 process, allowing employers to not only realize what they are spending on the process but also where they can potentially save money. Employers must not focus solely on potential fines and penalties to understand the cost of their Form I-9 process, as this can be

misleading. Organizations need to consider all aspects of their Form I-9 process and the time, costs and value associated with each. For example, employers can consider how much time they spend each week correcting errors and performing reverifications and then compare that against the average salary of their HR representatives or other personnel responsible for their Form I-9 operations. This can provide employers with the true costs of their Form I-9 operations, including onboarding, training and errors, and how and where they can save money.

## **Form I-9 and Onboarding**

Completing Form I-9 is generally part of an organization's onboarding process. When an organization onboards a new employee, it usually asks that employee to complete a variety of paperwork, including Form I-9. To improve onboarding efficiency and ensure Form I-9 compliance, employers can provide newly hired employees with the current version of the form and instructions, including the List of Acceptable Documents, prior to their first day. Employers can ask all newly hired employees to review the form and instructions and bring their identity and employability documents with them on their first day. Employers may ask employees to complete Section 1 of Form I-9 before their first day of work, as long as the employee has accepted an offer of employment. This may help employers ensure a smooth onboarding process and reduce errors.

Employers should ensure all newly hired employees complete Section 1 of Form I-9 and present identity and employability documentation in a timely manner. A trained representative of the employer, however, seldom oversees the employee as they complete Section 1. This can lead to errors or mistakes from the start, increasing the time and money employers must spend completing the form and complying with Form I-9 requirements. To reduce the risk of errors, employers can—prior to completing Section 2—review Section 1 and make sure the employee completed it properly. If there are any errors, they can return the form to the employee for corrections.

Employers must then complete Section 2 within three business days of the employee's first day. They do this by physically examining the employee's identity and employability documents in the employee's presence. Then, based on the documents provided, complete either List A or List B and List C to confirm the employee's documents were verified. Employers need to accurately note document titles and complete all information related to the documents on the form. They also need to enter the date of the employee's first day of employment and review all information, making revisions as necessary.

Some employers have integrated E-Verify into their onboarding process. In those cases, employers should create a case in E-Verify after completing Sections 1 and 2 of the form.

## **Maintaining Form I-9**

The IRCA requires employers to maintain Forms I-9 in an accurate, reliable manner and with integrity. This is to ensure no one alters an employee's form without proper authorization. This applies to both electronic and paper storage. Accordingly, employers may consider restricting access to completed Forms I-9 to a limited number of essential personnel, such as HR representatives. Due to sensitive and personally identifiable information (PII) that may be contained in Forms I-9, such as national origin, immigration status and marital status, employers may not want to permit managers and supervisors to have regular access to the forms and accompanying documents. Consequently, employers may choose to maintain Forms I-9 separately from employee personnel files.

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Employers are allowed—but not required—to photocopy documents used to verify an employee’s identity and employability. However, if an employer photocopies documents received from one newly hired employee, it should do so for all newly hired employees. Some states, like Colorado, Louisiana and Tennessee, require employers to retain photocopies of employee documents. Federal law prohibits employers from photocopying an employee’s identity and employability documents without completing Form I-9.

Photocopying documents is common practice because it allows employers to demonstrate compliance with Form I-9 requirements. Photocopies can be useful in correcting any issues discovered during an internal audit or in advance of a government audit. Employers can consider attaching photocopied documents to the completed Form I-9 so the documents do not get separated in the storage process.

Before photocopying documents presented by new hires, employers need to understand that there are both advantages and disadvantages to doing so.

The **advantages** of photocopying employee identity and employability documents may include:

-  It helps to ensure compliance with Form I-9 requirements.
-  It makes internal and government audits easier.
-  It reduces potential fines by showing good faith in the event of a government audit.
-  It provides a defense against potential discrimination claims.

The **disadvantages** of photocopying employee identity and employability documents may include:

-  Storing a large number of documents requires a great deal of effort, takes up space and can be expensive.
-  Copying employee documents does not eliminate or excuse an employer from completing Form I-9 for all employees.
-  Failing to properly and securely store employee documents can create potential privacy issues and expose the employer to liability, such as identity theft if someone obtains unauthorized access to employment documents.
-  Retaining copies of fraudulent or forged documents can be used as proof that the employer accepted falsified or forged documents, potentially exposing it to fines, penalties and criminal liability.

## Retaining Form I-9

Employers must retain an employee’s completed Form I-9 for as long as the employee works for the employer, regardless of citizenship or nationality.

Employers do not need to complete or retain a Form I-9 for the following circumstances:

- Employees hired on or before Nov. 6, 1986, and are still employed and have a reasonable expectation of employment at all times

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- Employees hired for employment in the Commonwealth of Northern Mariana Islands on or before Nov. 27, 2009, and are still employed and have a reasonable expectation of employment at all times
- Independent contractors and individuals providing services who are employed by a contractor providing contract services (i.e., employee leasing or temporary agencies)
- Individuals not physically working in the United States
- Self-employed individuals performing work on their behalf and not for a business entity
- Unremunerated interns
- Individuals employed for casual domestic work—such as a handyman, babysitter or cleaning person—in a private home on a sporadic, irregular or intermittent basis
- Employees referred by a state employment agency, as long as the agency provides the employer with a certificate

This list is not exhaustive, and specific state or local laws may impact these requirements. Employers should consider consulting with legal counsel to ensure compliance with all laws and requirements.

Once an individual’s employment has terminated, the employer must keep the former employee’s completed Form I-9 on file until at least three years after the date of hire or one year after the date employment is terminated, whichever is later.

**TO CALCULATE HOW LONG TO KEEP AN EMPLOYEE’S FORM I-9, EMPLOYERS CAN DO THE FOLLOWING:**

1. Enter the date the employee began work for pay:

a. Add three years to the date from line 1:

2. Enter the date employment was terminated:

b. Add one year to the date from line 2:

3. Which date is later, a or b?

c. Enter the later date:

*Employers must retain Form I-9 until the date on line c.*

## **Form I-9**

Once the date for retaining an employee's Form I-9 has passed, employers may destroy the form and any photocopies of the employee's identity and employability documents. Shredding is an acceptable way of destroying these documents. Purging a former employee's Form I-9 too early, however, is treated as if the employee's form is missing.

Employers do not need to file completed Forms I-9 with any federal agency. Employers can store completed Forms I-9 and any copies of documents in a manner that fits their business needs—keeping in mind that the form requires the collection of PII—and facilitates the requirement to make Forms I-9 available for inspection. Employers may store hard copies in alphabetic order in a folder—or electronic folder—specifically marked for Forms I-9. The USCIS recommends employers keep these files separate from employee personnel files. If an authorized officer from the DHS or employees of the Department of Labor (DOL) or the Immigrant and Employee Rights Section of the Department of Justice requests copies of the forms for any reason, employers must have original forms available on location within three days of the request.

Federal law permits employers to retain Forms I-9 on paper, microfilm, microfiche or electronically. Employers may also store Forms I-9 onsite or at an offsite storage facility and in a single format or a combination of formats.

### **Storing Original Paper Forms I-9**

Employees may keep paper copies of employee identification and eligibility documents with the employee's original, signed Form I-9. The USCIS recommends employers keep completed Forms I-9 separate from personnel records to facilitate an inspection request and to protect employee PII.

### **Storing Form I-9 on Microfilm or Microfiche**

Employers may keep copies of original, signed Forms I-9 on microfilm or microfiche. If employers choose to retain copies of completed Forms I-9 on microfilm or microfiche, the microfilm or microfiche should be:

- Legible and readable when displayed on a viewer or reproduced on paper
- Indexed so any particular record can be accessed immediately

If a government officer notifies an employer of an inspection, the employer must provide the officer with the microfilm or microfiche and a reader-printer that provides safety features, is in good-working order—clean condition and properly maintained—and is able to display and print a complete page of information.

Employers may destroy the original, signed Forms I-9 once they have preserved them on microfilm or microfiche.

### **Storing Form I-9 Electronically**

Employers may use a paper system, an electronic system or a combination of paper and electronic systems to store original, signed Forms I-9. If employers choose to retain copies of completed Forms I-9 electronically, the electronic-storage system must:

## **Form I-9**

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- Include controls to ensure the integrity, accuracy and reliability
- Include controls to detect and prevent the unauthorized or accidental creation, alteration or deletion of a completed Form I-9, including electronic signatures, if any
- Include controls to ensure an audit trail so any change or alteration to the form since its creation is electronically stored and can be accessed by a government officer during an inspection
- Include an inspection and quality assurance program that regularly evaluates the electronic-storage system, including electronic signatures, if any
- Include an index so any particular record can be accessed immediately
- Produce legible and readable records when displayed on a video-display terminal or reproduced on paper

### **Correcting Forms I-9**

It's common for completed Forms I-9 to contain errors or have missing information. If employers discover errors or missing information, they need to correct or add the information in a timely manner and document their actions. If there are errors or omissions in Section 1, only employees may correct or add information. In those situations, employers need to ask the employee to draw a line through the incorrect information, enter the correct or missing information, and initial and date the correction. If the employee is no longer working for the employer, the employer needs to attach a signed and dated memo to the former employee's form identifying the errors or omissions and explaining why corrections could not be made.

If a preparer or translator helped complete Section 1, the preparer or translator must follow the same steps to correct errors or omissions. If the preparer or translator is the same individual who completed the certification block on the original form, they do not need to complete the certification block again. If the preparer or translator is a different individual, that individual should complete the certification block. If the certification block was previously completed by a different preparer or translator, the individual needs to draw a line through the previous information in the block, add their information and indicate it was for corrections.

When correcting errors or omissions in Sections 2 or 3, employers need to draw a line through the incorrect information, enter the correct or missing information, and initial or date the correction. If employers failed to date Section 2 or 3 of the completed form, they should not backdate these sections. Instead, they need to use the date they completed the section and initial the date field. For any corrections, the employer must attach a memo outlining why the information needed correcting or was missing.

If employers need to correct multiple errors in a section, they may redo the section on a new Form I-9 and attach it to the originally completed form. Employers may also do this if a completed Form I-9 contains major errors, such as entire sections being left blank or using unacceptable documents to complete Section 2. In these situations, employers need to attach a memo to the original Form I-9

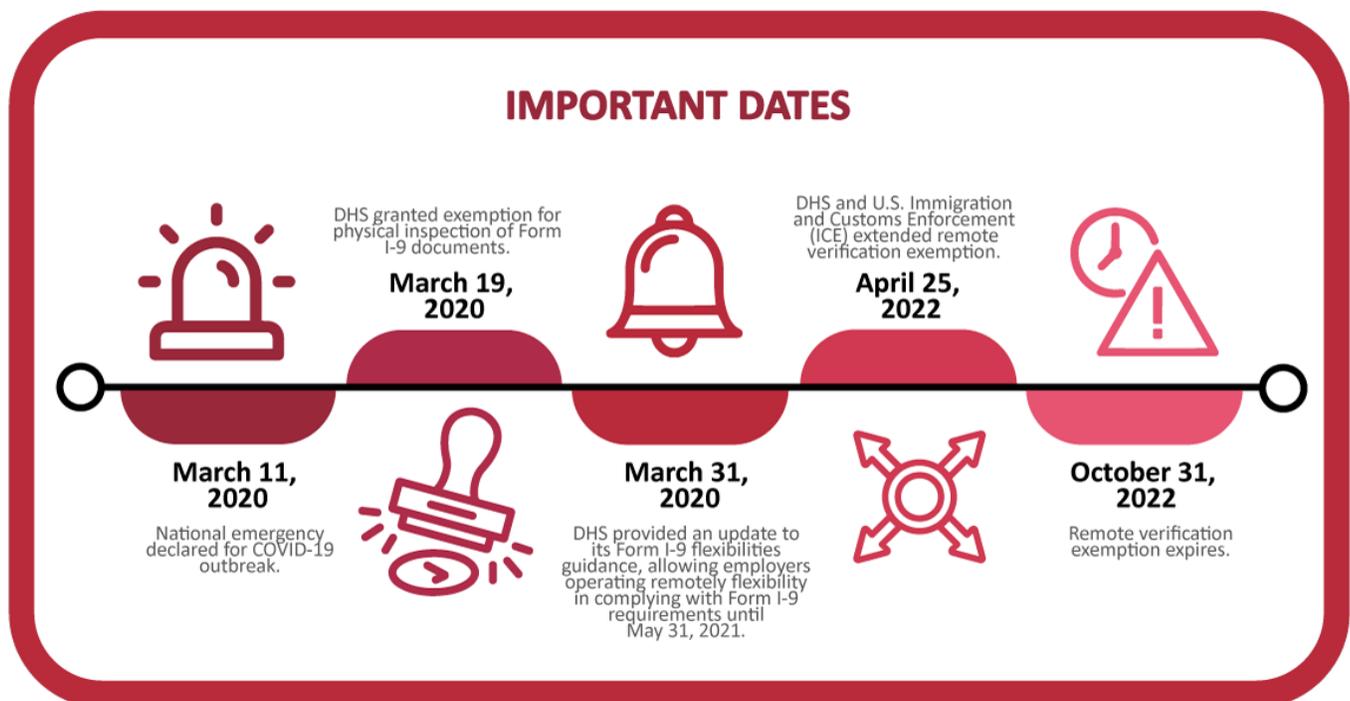
describing why they made the changes or created a new Form I-9. All corrections need to be initialed and dated with the current date.

It's important for employers not to conceal any changes to Form I-9, including erasing text or whiting it out. Employers using an electronic Form I-9 need to create an audit trail documenting all corrections and additions made to the form. Corrections may be made in a different color for clarity.

## Remote Verification Exemption

Federal law requires employers to physically examine an employee's identity and employment eligibility documentation to determine if it reasonably appears genuine and relates to the employee presenting it. However, on March 19, 2020, the DHS announced it would allow employers operating remotely to conduct remote verification of an employee's approved Form I-9 documents.

Remote verification includes reviewing an employee's identity and employment eligibility documentation over a video link, fax or email. This exemption applies only to employers who are operating remotely due to COVID-19 and any new hires affected by quarantine or lockdown orders. The exemption does not apply to employers who have employees physically present at a work location. The DHS is allowing remotely operating employers to conduct remote verification of approved Form I-9 documents until Oct. 31, 2022.



Under this exemption, employers must complete a remote inspection of approved documents within three business days after the employee's first day of work and enter "COVID-19" in Section 2 as the reason for the physical inspection delay. Employers using this exemption must keep written documentation of their remote onboarding and telework policy for each employee.

Within three days of an employer's resumption of normal operations, all employees who were onboarded using remote verification must present their approved documents for physical examination. When this

happens, employers will need to add “documents physically examined” to Section 2 with the date of inspection to any affected Forms I-9 or Section 3, as appropriate. Any government audit of Forms I-9 will use the in-person completed date as the starting point for affected employees only.

Both the DHS and ICE encourage employers to begin, at their discretion, in-person verification of identity and employment eligibility documentation for employees hired on or after March 20, 2020, and who presented verification and eligibility documentation for remote inspection. Some employers may not be able to timely inspect and verify—in person—identity and employment eligibility documentation for employees hired after March 20, 2020. For example, some affected employees may no longer be employed by the employer. In these cases, employers may record the reasons for their inability to timely inspect and verify—in person—identity and employment eligibility documentation in a memo retained with each affected employee’s completed Form I-9. If the employer is audited, the DHS and ICE will evaluate these reasons on a case-by-case basis.

The DHS recently [announced](#) plans to issue a proposed rule that would allow employers to verify employee identity and employment eligibility documentation virtually in certain circumstances or with respect to certain employers when completing Form I-9 verification requirements. Employers need to monitor both the DHS and ICE websites for additional updates regarding Form I-9 flexibilities.

## **Utilizing Vendors and Software for Form I-9 Compliance**

Form I-9 and E-Verify compliance frequently changes. Employers must stay up to date on all changes and regulations, requiring regular monitoring. Consequently, some employers use vendors to help ensure compliance with federal law for their Form I-9 and E-Verify processes. As Form I-9 compliance is laborious and costly, vendors may be able to provide better efficiency and improved compliance than employers could do on their own.

Some employers use vendors to complete the Form I-9 verification for a newly hired employee working remotely. Other employers use vendors to manage their entire Form I-9 process. Vendors can help employers expedite and improve their Form I-9 process by enhancing compliance with federal law, addressing challenges with remote hiring, converting paper forms and documents into electronic forms, and providing audit protection and security.

Vendors typically provide services such as:

- Evaluating employers’ Forms I-9 and E-Verify profiles to ensure compliance with federal laws
- Reviewing employers’ hiring process and procedures
- Guiding employers in properly correcting Form I-9 errors
- Reviewing employers’ completed Forms I-9 for technical, procedural or substantive errors
- Assessing employers’ HR training requirements for Form I-9 and E-Verify compliance
- Reviewing employers’ record retention and storage policy to ensure compliance with federal laws
- Advising employers on whether to enroll in E-Verify

- Representing employers in the event of audits or inspections by the federal government

Even if employers rely on vendors, employers are ultimately responsible for complying with federal law. Employers need to ensure their vendors rely on and receive guidance from immigration and employment attorneys.

Employers can also invest in software to increase compliance and efficiency and reduce errors. When selecting a software system, employers can consider choosing a system that:

- Validates all required Form I-9 fields are completed
- Confirms identification and employment eligibility document numbers are in the correct format
- Presents only document choices applicable to an employee's immigration status
- Triggers a Form I-9 for each new hire automatically

No system is infallible, and not all software systems will reduce the time and expense employers spend to be compliant. Even if employers rely on vendors or software systems for Form I-9 compliance, they will likely need to manually audit forms and employee documents processed by vendors or software systems.

## **Employees Without Documents**

All eligible employees need to be able to provide the necessary identification and employability documents. If a newly hired employee is unable to produce the required documents within three business days of being hired, they must present a receipt for the application for replacement documents within the three business days of hire and the actual document within 90 days of hire. If the newly hired employee is unable to do so, the employee should not work or be paid. Employers may terminate the employee or place the employee on an unpaid leave of absence for a defined and communicated period of time to permit the employee to obtain the required documents. If the employee is unable to present the necessary documentation at the end of the leave, the employer can terminate the employee.

Workers lacking permanent legal status must produce identification and employability documents at the time of hire. If they are unable to do so, employers must terminate their employment. Those working in the country illegally are not permitted to present a receipt for the application of replacement documents in lieu of the valid documents.

# Form I-9 Practices

Form I-9 appears deceptively simple, and as a result, employers may not prioritize the process appropriately. Despite being only two pages long, the form comes with 15 pages of complicated and confusing instructions. Furthermore, Form I-9 issues do not stop once the form is completed. To comply with federal law, employers must also properly maintain, retain and store completed forms according to specific requirements and address ongoing issues, such as correcting errors and reverifying expired documents. Employers are required to do this for all employees working in the United States. This can be especially difficult for employers with high employee turnover, employers employing hundreds of workers at multiple locations and small employers with limited resources.

Recently, the federal government has greatly increased workplace investigations, exposing more employers to fines and penalties for Form I-9 violations and making it more important than ever for employers to take compliance seriously and reevaluate their Form I-9 process. Employers must consider implementing best practices—such as conducting regular internal audits—to ensure they are complying with federal law.

This section will address common challenges employers face and provide suggested best practices to help employers manage their Form I-9 process. This section is not intended to provide or be a substitute for legal advice.

## Operational Challenges

Complying with Form I-9 requirements is challenging. Employers must spend a great deal of time and resources focused on Form I-9 operations and compliance to reduce the risk of audits, fines and penalties. The challenges employers face can differ based on their unique characteristics and specific circumstances.

### Centralized Versus Decentralized Organizational Structures

Employers implement organizational structures to meet their business needs. These structures are typically centralized or decentralized, and each comes with benefits and drawbacks. Centralized organizational structures rely on top-down decision-making where a single person typically makes or approves all decisions. This approach can reduce operational costs, ensure uniform procedures and coordinate action. Decentralized structures rely on multiple individuals to make decisions. This allows organizations to respond quickly when taking action or responding to problems.

Employers relying on centralized organizational structures will likely benefit when it comes to Form I-9 operations compared to organizations with decentralized structures. Form I-9 requirements are complex and compliance requires exactness, so organizations with a centralized structure are likely to experience consistency and standardization in their Form I-9 operations. This can help organizations reduce risk, lower operational costs, streamline internal processes and improve compliance. Consequently, employers with decentralized organizational structures will probably have to exercise more vigilance to ensure they comply with Form I-9 requirements and spend more time and resources to establish consistency, train personnel and reduce errors.

## Training Staff

Too often, employers assume their Form I-9 operations comply with federal requirements, including mistakenly believing their staff is properly trained to address the myriad of compliance issues that may arise when carrying out Form I-9 operations. Form I-9 compliance is difficult and rarely error-free. Untrained staff leaves an organization open to risk, and their mistakes can be extremely costly.

Training individuals responsible for an organization's Form I-9 process is critical for complying with federal requirements and reducing risks of fines, penalties and audits. Employers need to ensure any employee involved in the Form I-9 process is trained on the following:

- 1. Completing Form I-9
- 2. Maintaining completed forms
- 3. Storing completed forms
- 4. Correcting errors
- 5. Reverifying expired employee documents or documents for rehires
- 6. Purging old forms
- 7. Conducting internal audits
- 8. Preparing for government audits

Training individuals once is likely not enough due to the complex nature of Form I-9 requirements. Even the materials provided by the USCIS do not offer guidance on all situations or answer all questions. Ideally, these employees would be trained regularly to ensure they are knowledgeable of Form I-9 requirements and processes and can address any issues that may arise. Training will have to be updated to address changes to the form and the most current guidance from the USCIS and other federal agencies. While training may be costly and time-consuming, it can pay dividends by helping employers stay compliant. Employers can take advantage of the USCIS's [free employer training](#).

Training can be difficult and burdensome, especially for organizations with multiple locations or high rates of turnover among HR personnel. Employers in these situations may need to evaluate their unique needs and tailor staff training accordingly.

## Remote Verification of Employees

Federal law requires employers to physically examine an employee's identity and employment eligibility documentation within three business days of the employee's first day of work. This applies to employees that are working remotely. In-person verification can present challenges for employers, as they must either pay for the newly hired employee to travel to the employer's location, send an employer representative to verify the new hire's document in person or rely on an authorized representative. Due to COVID-19, the DHS is allowing employers who are operating remotely flexibility in complying with Form I-9 requirements until Oct. 31, 2022, including conducting virtual verification of a remote employee's approved Form I-9 documents.

Some state laws restrict who can complete Form I-9 verifications on behalf of employers. For example, in some states, only licensed attorneys or individuals who are bonded and qualified as immigration consultants may complete remote verifications. Accordingly, employers need to create policies outlining who can act as an agent for their organization to avoid potential violations. Employers can provide clear instructions to anyone completing Form I-9 verification on their behalf to reduce the risk of errors and fines. Employers need to review all Forms I-9 completed remotely to ensure they are accurate and take immediate action to correct any errors.

Having the new hire travel to the employer's location can be expensive and impractical. It may also create a negative first impression for the new hire if not done properly. Sending an employer representative to visit the employee can also be expensive, especially if the employer routinely hires remote employees. In addition, this may not be feasible due to the number of remote employees an employer may have and may consume much of the employer representative's time, limiting their ability to perform other tasks. However, in these situations, the employer would have more control over the verification process and be better able to ensure it is done properly.

Using an authorized representative may ease the burden on employers, but it can create potential risks. When relying on an authorized representative, employers have less control to ensure the verification is adequately completed. To reduce this risk, employers can use vendors and other professional services that are trained to perform Form I-9 verifications. While these services may reduce the risk of compliance issues, employers will have to pay for them, which can be expensive, depending on the number of remote employees.

### **Integrating Form I-9 Operations**

Some organizations perform their HR functions on separate and distinct platforms, but many employers are integrating these functions onto a single, common platform to improve overall HR functionality. Integration can reduce mistakes, eliminate inefficiencies, and help organizations increase savings and improve their bottom lines. Many organizations are using software systems to integrate their Form I-9 operations with their other HR functions. These software systems can reduce the time and expense of an organization's Form I-9 operations and even improve the reliability of information by reducing errors. However, even these systems are not infallible, so employers relying on them will likely need to perform manual audits for their completed forms. Accordingly, employers considering integrating their Form I-9 operations should weigh the potential risks and costs and decide whether integration will meet their business needs.

### **Industries With High Turnover**

Industries with high and continuous turnover rates, such as the restaurant industry, typically find Form I-9 operations and compliance especially challenging. Due to constant fluctuations in their workforce, organizations with high turnover rates are particularly susceptible to Form I-9 errors, increasing their risk of audits, penalties and fines. Therefore, prioritizing Form I-9 operations is critical for these organizations. They must establish effective systems to manage their Form I-9 operations and implement controls to ensure compliance. Training is also vital so that these organizations' HR professionals and employees know how to address common Form I-9 challenges quickly and effectively.

### **Operational Best Practices and Solutions**

The federal government has increased its enforcement efforts to identify and prosecute employers who violate the IRCA, believing illegal immigration can be reduced by actively targeting employers of unauthorized employees. Each year, the federal government recovers millions of dollars in fines and citations for the IRCA violations. As a result, employers are being forced to deal with more Form I-9 inspections and audits and, in some cases, criminal arrests and convictions.

ICE is working with the DOL and law enforcement to increase enforcement actions against employers engaging in immigration violations, document fraud and other infractions. For example, in January 2022, an administrative law judge (ALJ) imposed \$1,527,308.90 in Form I-9 fines against a staffing company for failing to timely prepare or provide requested Forms I-9, complete Forms I-9 within the required time period, and reverify employment authorization. The ALJ imposed the high fine even after giving the employer leniency by treating them as a small employer. As ICE has greatly increased workplace investigations, employers can implement best practices to avoid penalties.

Employers are responsible for ensuring they have completed Forms I-9 adequately for all employees. To comply with federal law, employers must devote considerable time and resources to their Form I-9 process. Therefore, it is critical that employers establish procedures and solutions to improve Form I-9 efficiency and compliance.

This section will explore potential best practices for Form I-9 operations and solutions to address operational challenges.

### **Establishing Best Practices**

Best practices are procedures that assist an organization in functioning more efficiently and achieving better results. When done effectively, they can guide an organization's course of action in a particular situation or in response to an issue or problem. Form I-9 best practices will likely vary for each organization, but organizations can rely on guiding principles to develop their own, including these examples:

- **Conduct research.** Before organizations can develop and implement best practices, they need to accurately understand their current practices and what other successful organizations are doing. Analyzing their current practices and researching others' can direct organizations where to start when developing their own best practices.
- **Document findings and potential changes.** After organizations have identified the most pressing challenges and issues and appropriate best practices for their organization, they can be documented and shared with all stakeholders.
- **Define metrics for best practices.** After organizations determine appropriate best practices, they can establish clearly defined metrics to allow them to track and measure whether they are meeting their practices.
- **Implement changes.** Once organizations have determined a set of best practices and established metrics to track them, it's time to implement them. Establishing policies and procedures can help organizations ensure these best practices are documented and followed. Organizations must communicate changes, expectations and metrics to all employees when implementing best

practices. They can consider providing training to any individuals responsible for implementing, tracking or overseeing an organization's best practices.

- **Reevaluate and improve.** Organizations can regularly reevaluate and improve their best practices to ensure they meet business needs and account for regulatory and industry changes.

### **General Best Practices**

Best practices can reduce the overall cost and burden of an organization's Form I-9 operations. Due to Form I-9 complexities, organizations need to consider implementing measures to ensure compliance with federal law to avoid enforcement actions and potential fines. Many organizations rely on the following best practices for the Form I-9 process:

- Training employees that oversee the Form I-9 process
- Assigning a single individual to oversee an organization's Form I-9 process
- Establishing a Form I-9 compliance policy
- Prioritizing and completing periodic internal Form I-9 audits
- Consulting with an attorney for guidance addressing Form I-9 challenges
- Supervising employee completion of Section 1
- Copying and storing documents and forms
- Correcting errors promptly and documenting all actions taken when making corrections
- Tracking expiration dates for reverification
- Storing documents properly
- Using electronic verification software for creating, managing and storing Forms I-9
- Enrolling in E-Verify

Employers who implement these or similar measures will not only be better prepared for a government inspection and reduce any potential liability, but they will also be able to reduce the time and costs spent on their Form I-9 operations.

### **Internal Form I-9 Audits**

Employers can ensure they comply with federal law by conducting internal audits of their completed Forms I-9. Despite being time-consuming and labor-intensive, internal audits typically are the best and sometimes the only systematic means to ensure compliance with federal law. Both the USCIS [Handbook for Employers](#) and [I-9 Central](#) provide resources for employers conducting internal audits. Alternatively, some employers hire vendors to assist with internal audits because they are so burdensome.

No matter how employers decide to conduct internal audits, they need to be systemic and thorough to safeguard against any government inspections and enforcement actions. Employers may consider taking the following steps while performing an internal Form I-9 audit:

- Step 1** Collect all Forms I-9. Employers can create two files: one for current employees and another for terminated workers.
- Step 2** Verify there is a completed Form I-9 for all current employees. Employers do not need completed Forms I-9 for nonemployees, such as independent contractors and volunteers.
- Step 3** Complete Forms I-9 for current employees that do not have a completed Form I-9.
- Step 4** Audit Forms I-9 of current employees to ensure each section is properly completed and accurate.
- Step 5** Correct errors on completed Forms I-9 for current employees.
- Step 6** Audit Forms I-9 for terminated employees.
- Step 7** Document the audit. Employers need to document all the steps they took during an internal audit in an audit log. Employers can keep a copy of their audit log with their Form I-9 files, along with any employee communications made during the audit process.

During an internal audit, if employers discover any current employees have not completed a Form I-9, they need to contact them immediately and request they present documents to verify their identity and eligibility to work in the United States. Employers can reach out to these employees individually, explain that they will not be able to continue working until they provide the required documents and provide a deadline to the employees for providing the documentation. Employers can ask employees to provide their documentation by the next day, if possible. Employers' communications to their employees during an internal audit can be written or verbal. If employers communicate in writing, copies of all employee communications can be kept in the employer's audit log.

When completing Forms I-9 for current employees, employers should use the employee's actual hire date, not the date the employee completes the form. Employers can attach a memo to the newly completed form explaining the employee did not have a completed Form I-9 and that the employee completed the Form I-9 as part of an internal audit.

During an internal audit, it is likely employers will discover errors on completed Forms I-9 for their current employees. Employers can demonstrate their good-faith efforts to comply with federal law—in the event of a government audit—by making a list of all Forms I-9 that contain errors. This list can identify the employee's name, the errors and the actions the employer took to correct the errors.

## **Form I-9**

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If employers discover errors on Forms I-9 for any terminated employees, they will not be able to correct any errors requiring the terminated employee's assistance, such as a missing document or signature. Still, employers can follow the same process for terminated employees as their current employees. All uncorrected errors can be explained in a memo attached to the terminated employee's Form I-9. Employers can record all corrections and any errors they were unable to correct for their terminated employees in their audit log.

Employers are not required to photocopy an employee's identity and employability documents, but they may. If employers choose to photocopy employee documents, they can attach them to the corresponding employee's completed Form I-9. During an internal audit, if employers discover they are missing photocopies of some employee documents, they can ask the affected employees for copies of the missing documents immediately. Employers can then attach the photocopy of the document to the corresponding Form I-9—along with a memo indicating that the photocopy of the document was missing and they obtained a photocopy during an internal audit. Employers can date the photocopy of the document.

If employers have changed their onboarding process and no longer photocopy employee documents, they can include a memo in their audit log. The memo should explain that during their internal audit, the employer discovered that some complete Forms I-9 had photocopies of documents while others did not and that they are no longer photocopying employee documents as part of their Form I-9 process. Employers can keep a copy of their audit log and any employee communications made during the audit process with their Form I-9 files.

By conducting internal audits, keeping audit logs, documenting errors and corrections, and retaining employee communications, employers can demonstrate their good faith if they are ever audited by the government.

### **Mutual Agreement Between Government and Employers**

The federal government provides employers with assistance to help improve their compliance with Form I-9 requirements. In July 2006, ICE established the Mutual Agreement Between Government and Employers (IMAGE) program. This voluntary program assists employers with developing a more secure and stable workforce and enhances employers' fraudulent document awareness through education and training.

Employers seeking certification in IMAGE must agree to:

- Complete the IMAGE Self-assessment Questionnaire.
- Enroll in the E-Verify Program within 60 days.
- Establish a written hiring and employment eligibility verification policy that includes an internal Form I-9 audit at least once a year.
- Submit to a Form I-9 Inspection.
- Review and sign an official IMAGE partnership agreement with ICE.

## **Form I-9**

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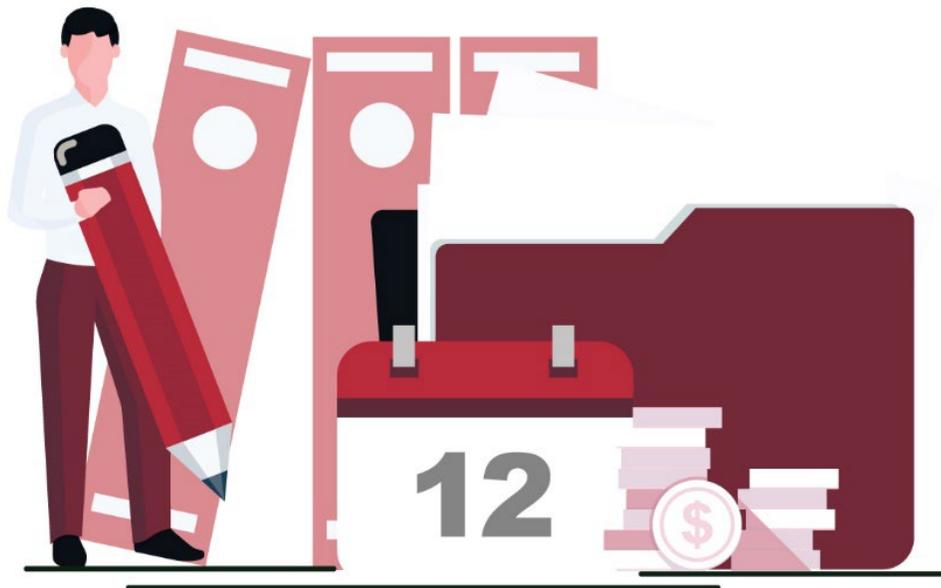
Upon enrolling and committing to the DHS’s best-employment practices, employers will be deemed “IMAGE-certified.” Once employers are IMAGE-certified, they receive the following benefits:

- Public recognition of their certification
- No federal Form I-9 inspection for at least four years
- ICE-provided training and guidance on proper hiring procedures and fraudulent document awareness.
- A stable workforce

Employers deemed IMAGE-certified can avoid lawsuits and other legal actions resulting from unauthorized employment.

### **Summary**

Form I-9 requirements and regulations present particular challenges for employers, especially since they cannot entirely eliminate the risk of errors or mistakes. Even though employers cannot eliminate errors, by understanding the operational challenges associated with Form I-9 processes and implementing solutions and best practices, they can better focus the time and resources they spend on their Form I-9 operations and achieve better results and improved compliance. These efforts may pay dividends as employers reduce the overall cost of their Form I-9 operations and their potential legal exposure.



# Form I-9 Violations, Fines and Penalties

The IRCA prohibits employers from knowingly hiring or continuing to employ an individual who is not authorized to work in the United States. This law also prohibits employers from hiring any individual, including a U.S. citizen, without verifying their identity and work authorization. Authorized officials of the federal government can perform worksite enforcement investigations and request copies of all Forms I-9 for any reason. If that happens, employers must have the original forms available on location within three days of the request. An employer's failure to properly verify and retain Forms I-9 for all employees can come at a high price; under the IRCA, employers can be subjected to costly fines for not complying with Form I-9 guidelines, accepting fraudulent documents when verifying an employee's identity and employment eligibility, or discriminating against individuals based on their citizenship status or national origin.

If an employer fails to properly complete or retain Forms I-9, the employer could be subject to civil monetary penalties. Fines can range from a few hundred dollars to several millions of dollars, depending on the offense and the frequency of offenses. In 2012, ICE audited over 3,000 employers, which resulted in fines of approximately \$13 million. The amount of any penalty is determined by the employer's size (e.g., number of employees, revenue and payroll), the seriousness of the violation, the employer's good faith, any of the employer's prior violations and the employee's eligibility to work in the United States.

Criminal penalties may apply in the event the employer engages in a pattern or practice of knowingly hiring or continuing to employ "unauthorized aliens," as termed by the USCIS, engages in fraud or otherwise misuses identity documents. For engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized aliens, employers may be subject to fines, up to six months of imprisonment or both; engaging in fraud or otherwise misusing identity documents may result in fines, up to five years of imprisonment or both.

Form I-9 violations often can lead to additional fines and penalties from other government agencies. Once an employer is found to have violated Form I-9 regulations, referrals may be made to other federal and state governmental agencies, which can result in additional investigations, audits, penalties and fines.

This section will address violations—including the fine process and base fine amounts—document abuse, discrimination and retaliation. This section is not intended to provide or be a substitute for legal advice.

## Form I-9 Violations

There are two types of Form I-9 violations under the IRCA. The first is recordkeeping violations. The second is hiring or continuing to employ unauthorized individuals.

### Form I-9 Paperwork Violations

Paperwork violations are among the most common Form I-9 violations. There are two types of paperwork violations: substantive and technical.

- Substantive paperwork violations may include:
  - Failure to timely prepare Form I-9

- Failure to timely present Form I-9
- Failure to reverify employment authorization in a timely manner
- Failure by the employee to sign Section 1
- Failure by the employer to sign Section 2
- Failure by the employer to sign Section 3 when reverification is required
- Failure by the employer to correct technical errors within the allotted time period after being served with a Notice of Technical or Procedural Failures by ICE
- Failure by the employer to examine an employee's documents in the presence of the employee presenting them, resulting in a false Section 2 attestation
- Technical paperwork violations may include:
  - Failure by the employee to list their maiden name, address or birth date in Section 1
  - Failure by the employee to include their "A" number if the box is checked in Section 1 indicating the employee is a permanent resident (this failure will only be considered a technical paperwork violation if the "A" number is included in Section 2 or on a copy of the document retained with the completed Form I-9; otherwise, the paperwork violation will be considered substantive)
  - Failure by the employer to include their "A" number or admission number if the box is checked in Section 1 indicating that the employee is an "alien authorized to work" in the United States (this failure will only be considered a technical paperwork violation if the "A" number is included in Section 2 or on a copy of the document retained with the completed Form I-9; otherwise, the paperwork violation will be considered substantive)
  - Failure by the employer to provide the title, business name and address in Section 2
  - Failure by the form's preparer or translator to include their name, address, signature or date in the preparer's certification box

The civil penalties for Form I-9 violations in 2022 range from \$252 to \$2,507 for an employer's first offense. For the second and any subsequent paperwork violations, the range is \$1,161 to \$2,322. Subsequent violations are not limited to those that occur within a few years of each other but can be 25 years apart.

### **Knowingly Hiring, Recruiting, Referring or Retaining Unauthorized Alien Violations**

The IRCA prohibits employers from knowingly hiring, recruiting, referring or continuing to employ an individual who is not authorized to work in the United States. Employers who knowingly hire or continue to employ unauthorized aliens are required to cease their unlawful activity and may be fined and

criminally prosecuted. These employers may also be debarred, meaning they may not conduct business with the federal government.

Even if an employee who is unauthorized is working for an employer, it does not necessarily mean the employer has committed a violation or crime. Employers must either have actual or constructive knowledge that the individual being hired or permitted to continue work is unauthorized for it to constitute a violation or crime.

The civil penalties for knowingly hiring, recruiting, referring or retaining unauthorized aliens range from \$627 to \$5,016 for the first offense. The penalties for the second offense range from \$5,106 to \$12,537, and the penalties for the third and any subsequent offenses are \$7,523 to \$25,076. As with paperwork violations, subsequent violations can be 25 years apart.

While employer prosecutions are still rare, the risks for employers are high. In 2017, ICE levied its largest fine ever against an employer in a criminal enforcement case for hiring and rehiring employees that were ineligible to work in the United States. After a six-year investigation, Asplundh Tree Experts Co. was forced to pay \$95 million after pleading guilty to employing unauthorized aliens.

## Penalty Process

Many worksite-enforcement investigations are initiated in response to reports of fraud, misuse of visas, human trafficking, and other forms of exploitation and abuse from employees or competitors. They may also be the result of random or targeted audits or referrals from other government agencies—such as the DOL, USCIS and IRS—that discover issues during the course of their normal activities.

Employers may be penalized for any violations. If ICE believes an employer has committed a violation, it will serve the employer with a Notice of Inspection. This notice is a subpoena to review the employer's Forms I-9 and other HR-related documents, such as payroll records. The employer has three business days to provide ICE with the requested documents. An employer may request an extension to produce the documents but granting the request is at ICE's discretion.

ICE will review each Form I-9 to identify any substantive or technical paperwork violations and all employees the employer knowingly hired or continued to employ without authorization. After ICE reviews the employer's documents, it may provide the employer with other notices. These notices may include:

- **Notice of Inspection Results**—This notice is used to notify a business that it is in compliance with applicable employee eligibility verification requirements. This is also known as a “Compliance Letter.”
- **Notice of Discrepancies**—This notice advises the employer that, based on a review of the Forms I-9 and any related documentation submitted by employees, ICE has been unable to determine an employee's eligibility to work in the United States. The employer should provide the employees with a copy of the notice and an opportunity to present ICE with additional documentation establishing valid U.S. work authorization.
- **Notice of Suspect Documents**—This notice advises the employer that, based on a review of the Forms I-9 and documentation submitted by relevant employees, ICE determined that the documentation presented by employees does not relate to the employees or is otherwise not

valid for employment. This notice also advises the employer of the possible criminal and civil penalties for continuing to employ unauthorized workers. ICE provides the employer and employees an opportunity to provide documentation demonstrating valid U.S. work authorization if they believe the finding is in error.

- **Notice of Technical and Procedural Failures**—This notice identifies technical or procedural failures found during the inspection of Forms I-9 and gives the employer at least 10 business days to correct the forms. After this correction period ends, uncorrected technical or procedural failures will become substantive violations.
- **Warning Notice**—This notice is issued when substantive verification violations are identified, but there is an expectation of future compliance by the employer. However, a Warning Notice should not be issued in the following circumstances:
  - The employer was previously the subject of a Warning Notice or a Notice of Intent to Fine.
  - The employer was notified of technical or procedural failures and failed to correct them within the allotted 10-businessday period.
  - The employer had a 100% failure to prepare and present Forms I-9.
  - The employer hired unauthorized workers as a result of substantive violations.
  - There is any evidence of fraud in the completion of Forms I-9 (e.g., backdating) on the part of the employer.
- **Notice of Intent to Fine**—This notice may be issued for substantive violations, uncorrected technical or procedural failures, knowingly hire violations and continuing to employ violations. In instances where a Notice of Intent to Fine is served, the charging documents specifying the alleged violations committed by the employer will be provided.
- **Final Order to Cease Violations and Pay Fine**—This notice contains the total amount of the fine or penalty the employer must pay.

If ICE concludes after completing its audit that the employer's documents contain less than 10% errors, it will typically issue a Warning Notice but no penalty.

If ICE determines penalties are warranted, the penalty amount is determined by ICE attorneys and special agents. Employers can challenge the penalties within 30 days of receipt of the Notice of Intent to Fine by requesting a hearing before an ALJ from the Office of the Chief Administrative Hearing Officer (OCAHO). The ALJ can adjust the penalty amount. If the employer does not request a hearing after receiving the Notice of Intent to Fine, ICE will issue the Final Order to Cease Violations and Pay Fine.

### **Violation Error Rate and Base Fine Amount**

To calculate the violation error rate for paperwork, hiring or continuing-to-employ violations, ICE totals the number of violations and divides them by the number of Forms I-9 that should have been presented

for inspection. The percentage from this calculation is the violation error rate that ICE uses to determine the minimum and maximum civil penalty base fine amount. This amount may change depending on whether it is the employer’s first, second or third or higher offense. Paperwork violations and hiring or continuing-to-employ violations can be calculated separately or jointly. If the violations are calculated jointly, the level of the fine will likely increase.

$$\frac{\text{NUMBER OF VIOLATION}}{\text{NUMBER OF TOTAL FORMS}} = \text{VIOLATION ERROR RATE}$$

Once the violation error rate is calculated, ICE uses a graduated scale to determine the base fine amount. The percent is the violation percentage that will determine the minimum and maximum penalty base fine amount, which may be adjusted on whether it is the employer’s first, second, third or higher offense. The violation percentages are separated into the following ranges:

- 0%-9%
- 10%-19%
- 20%-29%
- 30%-39%
- 40%-49%
- 50% or more

For example, ICE’s 2019 penalty matrices were as follows:

**DETERMINATION OF FINES: PENALTIES FOR SUBSTANTIVE AND TECHNICAL VIOLATIONS**

*SUBSTANTIVE AND UNCORRECTED TECHNICAL VIOLATION FINE SCHEDULE*

SUBSTANTIVE VERIFICATION VIOLATIONS	STANDARD FINE AMOUNT		
	FIRST OFFENSE <i>\$230-\$2,292</i>	SECOND OFFENSE <i>\$230-\$2,292</i>	THIRD OFFENSE OR MORE <i>\$230-\$2,292</i>
0%-9%	\$230	\$1,146	\$2,292
10%-19%	\$573	\$1,375	\$2,292
20%-29%	\$917	\$1,604	\$2,292
30%-39%	\$1,261	\$1,834	\$2,292
40%-49%	\$1,604	\$2,063	\$2,292
50% OR MORE	\$1,948	\$2,292	\$2,292

## DETERMINATION OF FINES: PENALTIES FOR KNOWINGLY HIRING OR CONTINUING-TO-EMPLOY VIOLATIONS

### KNOWINGLY HIRING OR CONTINUING-TO-EMPLOY FINE SCHEDULE

KNOWINGLY HIRING OR CONTINUING- TO-EMPLOY VIOLATIONS	STANDARD FINE AMOUNT		
	FIRST TIER <i>\$573-\$4,586</i>	SECOND TIER <i>\$4,586-\$11,463</i>	THIRD TIER <i>\$6,878-\$22,972</i>
0%-9%	\$573	\$4,586	\$6,878
10%-19%	\$1,192	\$6,614	\$8,942
20%-29%	\$1,834	\$7,566	\$11,693
30%-39%	\$2,522	\$8,551	\$14,444
40%-49%	\$3,210	\$9,514	\$17,333
50% OR MORE	\$3,898	\$10,489	\$20,130

In 2022, for first-time violators of substantive or technical violations, the scale begins at \$252 for error rates of 0% to 9% and tops out at \$2,507 for error rates at 50% or above.

For example, if an employer with 100 employees has 30 substantive paperwork violations and 40 technical paperwork violations, the base fine amount would be calculated as follows:

- 30 Substantive Paperwork Violations / 100 Total Forms = 30% Violation Error Rate
- 40 Technical Paperwork Violations / 100 Total Forms = 40% Violation Error Rate

Add the substantive paperwork violation error rate to the technical paperwork violation rate to get the total paperwork error rate:

- 30% Substantive Paperwork Violation Error Rate + 40% Technical Paperwork Violation Error Rate = 70% Total Paperwork Violation Error Rate

The percentage from this calculation is the violation percentage that will determine the minimum and maximum civil penalty base fine amount, which may depend on whether it is the employer’s first, second, third or higher offense. As the employer’s total error rate is at 50% or above, the fine amount would be a minimum of \$2,507 per paperwork violation.

The base fine amount is then calculated by multiplying the total violations by the fine amount. Based on ICE’s 2022 penalty matrices, the base fine amount in the above example would be \$175,490 (70 Total Paperwork Violations x \$2,507 = \$175,490 Base Fine Amount).

Fines may be adjusted up or down by 5% for each of the following factors:

- Employer size
- Employer good faith
- Seriousness of violation
- Employment of unauthorized aliens
- Prior history of violations

Accordingly, a total of 25% may be added or deducted from the base amount fine.

An employer's good-faith attempt to comply with the IRCA alone may be sufficient to avoid penalties, except when an employer fails to correct deficiencies after receiving notice from ICE or engages in a pattern or practice of violations.

## **Document Abuse**

The IRCA requires employers to verify the identity and employment eligibility of all employees. Employers are prohibited from engaging in document abuse for all employees, regardless of citizenship or immigration status.

The IRCA's document-abuse provisions prohibit employers from:

- Requesting more documents than are minimally necessary to complete Form I-9
- Limiting and specifying what documents an employee may present to verify identity and employment eligibility
- Refusing to accept documents that reasonably appear to be genuine

Document abuse may occur at the time an employee is hired or any time employers demand an employee to present documents verifying their ability to work in the United States after being hired and successfully completing the Form I-9 process, including during reverification.

Employers are only permitted to reverify an employee's employment eligibility under limited circumstances. These circumstances include:

- When an employee's employment authorization document that was presented to complete the Form I-9 process is about to expire or has expired
- When ICE informs employers of issues with an employee's employment authorization documents
- When employers have "constructive knowledge" that an employee is not authorized to work in the United States

"Constructive knowledge" means employers have clear evidence that an employee is unauthorized—such as a notice from a federal immigration agency. The suspicion that an employee is unauthorized is not

enough. Importantly, a “no-match” letter from the Social Security Administration (SSA) alone does not constitute constructive knowledge.

Employers are not required to reverify an employee’s employment authorization if they are returning to work from an approved leave or after being reinstated after an unlawful suspension or termination. In these situations, employers attempting to reverify an employee’s employment authorization may be violating the IRCA’s document-abuse provisions.

Employers found to have violated the IRCA’s document-abuse provisions may be required to hire or reinstate employees, with or without back pay, pay civil penalties or end discriminatory practices.

## **Discrimination and Retaliation**

While federal law requires all employers to verify an employee’s eligibility to live and work in the United States, employers must not discriminate against individuals based on their national origin, immigration status or citizenship status with respect to hiring, firing, recruitment or referral. Employers who ask individuals their national origin or citizenship status before extending an offer of employment may raise an inference of discrimination. Employers are prohibited from discriminating against undocumented workers, refugees or individuals with temporary visas or who have been granted asylum. Doing so may not only violate the IRCA’s discrimination provisions but federal and state discrimination laws as well.

The IRCA also prohibits employers from taking any kind of adverse employment action against individuals who assert their rights under the IRCA or initiate, assist or participate in discrimination claims. For example, an individual who participates in an employer’s workplace investigation regarding another employee’s complaints of discrimination may not be terminated, demoted, transferred, or threatened with such for participating in the investigation.

The IRCA’s discrimination and retaliation provisions only apply to employers with four or more employees. Employers found to have violated these provisions may be required to hire or reinstate employees, with or without back pay, post notices at worksites outlining employee rights and employer obligations, and educate personnel involved in hiring and employment verification regarding legal requirements.

## E-Verify

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorized the federal government to implement a system to enhance the enforcement of federal immigration law. This system, known as E-Verify, assists employers in ensuring they are complying with federal law. As employers review their Form I-9 process, they can consider E-Verify and decide whether enrolling in the program is the best decision for their organization.

While E-Verify uses information from Form I-9, there are important differences between Form I-9 and E-Verify requirements. For example, all employers must complete Form I-9 for all employees, but E-Verify is voluntary for most employers. While a Social Security number and photographs of List B documents are not required to complete Form I-9, they are required for E-Verify. Furthermore, employers must use Form I-9 to reverify expired employment eligibility documents; employers may not use E-Verify to reverify expired employment eligibility.

E-Verify is a free web-based system that allows enrolled employers to verify the identity and employment eligibility of their newly hired employees. Individuals may use E-Verify Self Check to confirm their own employment eligibility.



More than 1 million employers are enrolled in E-Verify; on average, 1,500 new employers join every week.

E-Verify is administered by the SSA and USCIS. It is limited to cases in the United States, including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands. The USCIS provides support, training and outreach to help employers comply with federal law.

While E-Verify is a voluntary program for employers, it is required for federal contractors with contracts containing the FAR E-Verify clause. Additionally, employers may be forced to participate in E-Verify as a result of a legal ruling. Even some states require employers to use E-Verify as a condition of business licensing. Employers may even use E-Verify to supplement their Form I-9 compliance when it's not required. E-Verify can be a valuable tool for helping employers verify the employability of their workers. Before enrolling in the program, employers need to weigh the advantages and disadvantages of E-Verify and decide what is best for them.

### How E-Verify Works

The E-Verify process begins with a completed Form I-9. Employers enter an employee's Form I-9 information into E-Verify. Unlike the Form I-9 process—where employees can voluntarily provide their Social Security numbers—E-Verify requires employees to provide their Social Security numbers to verify their employment eligibility. E-Verify verifies the employee's employment eligibility by comparing the

employee's Form I-9 information with SSA and DHS records. Verification typically takes a few seconds. E-Verify will either confirm the employee's employment eligibility or indicate that the employee needs to take further action to verify their employment eligibility. Employers can only verify the employment eligibility of one employee at a time. The process of verifying an individual's employment eligibility is referred to as a "case."



Through the fourth quarter of fiscal year 2021, there were 42,526,352 E-Verify Cases. Of those cases, there were only 592,230 instances where cases were not authorized. Consequently, 98.48% of newly hired employees were automatically confirmed as authorized to work either instantly or within 24 hours.

E-Verify does not change the timelines for complying with Form I-9 requirements. Employers must still create an E-Verify case no later than the third business day after a newly hired employee starts working for pay.

When completing E-Verify, if a newly hired employee presents a List B document, the document must contain a photograph. If the employee objects to providing a document with a photograph for religious reasons, the employer should contact E-Verify. If the employee presents a U.S. passport, U.S. passport card, permanent resident card or employment authorization document, the employer must photocopy the document and retain it with the employee's Form I-9.

If a newly hired employee has applied for but has not received a Social Security number, the employer must attach an explanation to the employee's Form I-9 and let the employee continue to work. As soon as the employee receives their Social Security number, the employer creates a case for the employee in E-Verify. The employer must do the same if the employee's document has been lost, stolen or damaged, and the employee presents the employer with a receipt showing they have applied for a replacement document.

E-Verify allows employers to use an agent to act on their behalf to verify the employment eligibility of newly hired employees and employees assigned to a federal contract.

## **E-Verify Case Process**

E-Verify provides the employers with a case result after comparing the newly hired employee's information with SSA and DHS records. The results can be initial, interim or final. Each case must receive a final case result and be closed to complete the E-Verify process.

Case results will be one of the following:

- **Employment Authorized**—The employee's information matched SSA and DHS records.
- **Verification in Process**—The case was referred to the DHS for further verification.

## Form I-9

- **Tentative Nonconfirmation (TNC)**—The employee’s information did not match SSA and DHS records, and additional action is required.
- **Case in Continuance**—The employee has to visit an SSA field office or contact the DHS and more time is needed to determine a final case result.
- **Close Case and Resubmit**—The SSA or DHS requires employers to close the case and create a new case for the employee.
- **Final Nonconfirmation**—E-Verify cannot confirm the employee’s employment eligibility after the employee visited the SSA or contacted the DHS.

### Resolving E-Verify Case Issues

When the information entered into E-Verify does not immediately match the newly hired employee’s Form I-9 information from SSA or SSA records, employers receive a TNC.

A DHS data mismatch may result in a TNC for one of the following reasons:

- ⚠ The employee’s name, Alien Number (A-Number) and/or Form I-94 number does not match DHS records.
- ⚠ The employee’s U.S. passport, U.S. passport card, driver’s license, foreign passport or state ID card information could not be verified.
- ⚠ The employee’s information was not updated in DHS records when their citizenship or immigration status changed.
- ⚠ The employee’s citizenship or immigration status changed.
- ⚠ The employee’s information was not entered correctly in E-Verify.
- ⚠ The employee’s information was not entered correctly on the employee’s Form I-9.
- ⚠ The employee’s record contains another error.

An SSA data mismatch may result in a TNC for one of the following reasons:

- ⚠ The employee’s citizenship or immigration status was not updated with SSA.
- ⚠ The employee’s name change was not reported to SSA.
- ⚠ The employee’s name, Social Security number or date of birth is incorrect in SSA records.
- ⚠ The employee’s SSA record contains another type of mismatch.
- ⚠ The employee’s information was not entered correctly in E-Verify.
- ⚠ The employee’s information was not entered correctly on the employee’s Form I-9.

Receiving a TNC does not necessarily mean that the newly hired employee is not authorized to work in the United States. Instead, the employee must be permitted to resolve a TNC if they desire. If an

employee challenges a TNC, employers must allow the employee to continue to work without any change in working conditions because of the TNC.

### **Closing E-Verify Case**

To complete the E-Verify process, employers must receive a final case result and close the case. There are four possible final case results:

- **Employment Authorized**—The employee’s identity and work eligibility are confirmed.
- **SSA or DHS Final Nonconfirmation**—The employee’s work eligibility cannot be confirmed based on the information provided. The employer must select the appropriate case closure statement and close the case.
- **DHS No Show**—The employee failed to contact the DHS within eight federal-government working days. The employer must select the appropriate case closure statement and close the case.
- **Error: Close Case and Resubmit**—The case cannot continue because the expiration date entered for the employee’s U.S. passport, U.S. passport card or driver’s license is incorrect. The employer must resubmit the case in E-Verify with an unexpired document date.

Cases resulting in “Employment Authorized” are automatically closed. E-Verify requires employers to close all other cases after they receive the final case result.

Employers close a case by selecting the appropriate case closure statement. There are 12 possible case closure statements:

- The employee continues to work for the employer after receiving an Employment Authorized result.
- The employee continues to work for the employer after receiving a Final Nonconfirmation result.
- The employee continues to work for the employer after receiving a No Show result.
- The employee continues to work for the employer after choosing not to contest a TNC.
- The employee was terminated by the employer after receiving a Final Nonconfirmation result.
- The employee was terminated by the employer for receiving a No Show result.
- The employee was terminated by the employer for choosing not to contest a TNC.
- The employee voluntarily quits working for the employer.
- The employee was terminated by the employer for reasons other than E-Verify.
- This case is being closed because of technical issues with E-Verify.

- This case is invalid because another case with the same data already exists.
- This case is invalid because the data entered is incorrect.

## **Rehires**

With E-Verify, employers can complete Section 3 for rehired employees or treat rehired employees as new hires and ask them to complete a new Form I-9 and create a case for them in E-Verify. If employers rehire an employee within three years of the initial execution of the previous Form I-9 but did not create an E-Verify case for the employee, employers need complete a new Form I-9 and create a E-Verify case for the rehired employee.

If employers rehire a former employee within three years of the date of the initial execution of the employee's Form I-9 and create a case in E-Verify for the employee's previously completed Form I-9 and receive employment authorization, employers may rely on the information from the employee's previous Form I-9.

## **Employer Considerations Before Enrolling in E-Verify**

Before enrolling in E-Verify, employers need to consider the potential upsides and risks of the program. One of the most significant benefits of E-Verify is that it's free. It can also protect employers from penalties relating to hiring undocumented workers. E-Verify is intended to simplify the process of verifying employee identity and employment eligibility and improve compliance with federal law by quickly determining whether an employee is authorized to work in the United States. The program provides employers with training, customer support, error checking and usage reports.

Employers must consider the high transactional costs when voluntarily enrolling in the program. E-Verify is supposed to simplify the verification process, but employers typically must complete a considerable amount of ancillary work. Employers may also have to navigate state laws and requirements, which can increase the cost and burden of compliance for an organization. E-Verify has specific rules and requirements for document acceptance, retention and processing. As such, training employees is especially important when using E-Verify. In addition, enrolling in E-Verify means employers face increased government oversight of their business, which may lead to increased exposure. Consequently, employers with high rates of employee turnover may want to reconsider before voluntarily enrolling in E-Verify.

## Summary

Form I-9 requirements impact all employers. As enforcement actions continue to escalate, Form I-9 compliance appears to be especially vital. However, employers can regularly evaluate how well their organizations are meeting Form I-9 requirements and whether they are prepared for a possible government audit. There are many ways for an organization to do this, but regardless of employers' strategies, they need to review their methods for completing, maintaining and retaining Forms I-9 and scrutinize their completed forms for accuracy. Correcting and documenting errors can not only reduce an organization's potential legal risk but also highlight the changes organizations can implement to improve their overall Form I-9 process. As with any important function, training personnel is key.

Strategies for implementing an effective Form I-9 process will likely vary depending on the size of the employer and the location of employees, but an effective process can help reduce potential legal exposure while reducing expenses. Because of the complexities and time-consuming nature of Form I-9 compliance, it's tempting for organizations to neglect these tasks. Delaying compliance measures may expose employers to potential fines, penalties and criminal liabilities. Making Form I-9 compliance a priority is beneficial for an organization's bottom line.

Contact The Timberland Group for more information about the Form I-9 process, compliance and best practices.

# Appendix

Complying with Form I-9 requirements is not a simple task. It requires a lot of work. This section takes away some of that burden by offering valuable resources that you can print or email and use for your organization. This appendix features checklist, employee communications and more. Due to the complex nature of Form I-9 compliance, organizations are encouraged to seek legal counsel to discuss and address specific issues and concerns.

Speak with The Timberland Group if you have any questions about these resources. Note that some sections may require customization.

## **Printing Help**

There are many printable resources in this appendix. Please follow the instructions below if you need help printing individual pages.

1. Choose the “Print” option from the “File” menu.
2. Under the “Settings” option, click on the arrow next to “Print All Pages” to access the drop-down menu. Select “Custom Print” and enter the page number range you would like to print, or enter the page number range you would like to print in the “Pages” box.
3. Click “Print.” For more information, please visit the Microsoft Word [printing support page](#).



**Employment Eligibility Verification**  
**Department of Homeland Security**  
**U.S. Citizenship and Immigration Services**

**USCIS**  
**Form I-9**  
 OMB No. 1615-0047  
 Expires 10/31/2022

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Attestation** *(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)*

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number [ ][ ] - [ ][ ] - [ ][ ][ ][ ]		Employee's E-mail Address			Employee's Telephone Number

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States	
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions)	
<input type="checkbox"/> 3. A lawful permanent resident (Alien Registration Number/USCIS Number): _____	
<input type="checkbox"/> 4. An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy): _____ Some aliens may write "N/A" in the expiration date field. (See instructions)	
Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.	
1. Alien Registration Number/USCIS Number: _____ OR 2. Form I-94 Admission Number: _____ OR 3. Foreign Passport Number: _____ Country of Issuance: _____	QR Code - Section 1 Do Not Write in This Space

Signature of Employee	Today's Date (mm/dd/yyyy)
-----------------------	---------------------------

**Preparer and/or Translator Certification (check one):**

I did not use a preparer or translator.     A preparer(s) and/or translator(s) assisted the employee in completing Section 1.  
*(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)*

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator		Today's Date (mm/dd/yyyy)	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State ZIP Code



*Employer Completes Next Page*





**Employment Eligibility Verification**  
**Department of Homeland Security**  
**U.S. Citizenship and Immigration Services**

**USCIS**  
**Form I-9**  
 OMB No. 1615-0047  
 Expires 10/31/2022

**Section 2. Employer or Authorized Representative Review and Verification**

*(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")*

<b>Employee Info from Section 1</b>	Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
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List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date (if any) (mm/dd/yyyy)		Expiration Date (if any) (mm/dd/yyyy)		Expiration Date (if any) (mm/dd/yyyy)
Document Title		Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space
Issuing Authority				
Document Number				
Expiration Date (if any) (mm/dd/yyyy)				
Document Title				
Issuing Authority				
Document Number				
Expiration Date (if any) (mm/dd/yyyy)				

**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

**The employee's first day of employment (mm/dd/yyyy):** \_\_\_\_\_ *(See instructions for exemptions)*

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Title of Employer or Authorized Representative		
Last Name of Employer or Authorized Representative	First Name of Employer or Authorized Representative	Employer's Business or Organization Name		
Employer's Business or Organization Address (Street Number and Name)		City or Town	State	ZIP Code

**Section 3. Reverification and Rehires** *(To be completed and signed by employer or authorized representative.)*

<b>A. New Name (if applicable)</b>			<b>B. Date of Rehire (if applicable)</b>	
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)	

**C.** If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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## LISTS OF ACCEPTABLE DOCUMENTS

### All documents must be UNEXPIRED

Employees may present one selection from List A  
or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
<ol style="list-style-type: none"> <li>1. U.S. Passport or U.S. Passport Card</li> <li>2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</li> <li>3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa</li> <li>4. Employment Authorization Document that contains a photograph (Form I-766)</li> <li>5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:               <ol style="list-style-type: none"> <li>a. Foreign passport; and</li> <li>b. Form I-94 or Form I-94A that has the following:                   <ol style="list-style-type: none"> <li>(1) The same name as the passport, and</li> <li>(2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.</li> </ol> </li> </ol> </li> <li>6. 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</li> </ol>	OR	<ol style="list-style-type: none"> <li>1. 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</li> <li>2. 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</li> <li>3. School ID card with a photograph</li> <li>4. Voter's registration card</li> <li>5. U.S. Military card or draft record</li> <li>6. Military dependent's ID card</li> <li>7. U.S. Coast Guard Merchant Mariner Card</li> <li>8. Native American tribal document</li> <li>9. Driver's license issued by a Canadian government authority</li> <li style="text-align: center;"><b>For persons under age 18 who are unable to present a document listed above:</b></li> <li>10. School record or report card</li> <li>11. Clinic, doctor, or hospital record</li> <li>12. Day-care or nursery school record</li> </ol>	AND	<ol style="list-style-type: none"> <li>1. A Social Security Account Number card, unless the card includes one of the following restrictions:               <ol style="list-style-type: none"> <li>(1) NOT VALID FOR EMPLOYMENT</li> <li>(2) VALID FOR WORK ONLY WITH INS AUTHORIZATION</li> <li>(3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION</li> </ol> </li> <li>2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)</li> <li>3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal</li> <li>4. Native American tribal document</li> <li>5. U.S. Citizen ID Card (Form I-197)</li> <li>6. Identification Card for Use of Resident Citizen in the United States (Form I-179)</li> <li>7. Employment authorization document issued by the Department of Homeland Security</li> </ol>

Examples of many of these documents appear in the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.

# CHECKLIST | Completing Form I-9

Presented by The Timberland Group

Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or authorized foreign nationals. To comply with the law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification form (Form I-9). Employers must have a completed Form I-9 for every employee hired after Nov. 6, 1986.

Complying with Form I-9 requirements accurately and in a timely manner is difficult. The risk employers face for any errors is real and can be extremely expensive. Employers who fail to comply with Form I-9 requirements can face severe consequences, including civil and criminal penalties.

This checklist outlines the steps for completing Form I-9 for a newly hired employee. This checklist is intended to be used as a guide, and the steps in this list should be modified to meet the unique needs of your organization and its onboarding process. This checklist should be completed by someone trained in Form I-9 requirements to reduce the risk of errors.

This checklist provides an overview of completing Form I-9 for a newly hired employee and should not be construed as legal advice. Due to the complex nature of Form I-9 compliance, employers are encouraged to seek legal counsel to discuss and address specific issues and concerns.

On or Before Employee's First Day of Employment	Complete	Not Applicable
Provide the employee with the current Form I-9, instructions and List of Acceptable Documents.	<input type="checkbox"/>	<input type="checkbox"/>
Request that the employee provide identity and employability documents for verification.	<input type="checkbox"/>	<input type="checkbox"/>
Communicate to the employee that Form I-9 must be completed no later than the end of their first day of employment.	<input type="checkbox"/>	<input type="checkbox"/>

Completing Section 1 of Form I-9	Complete	Not Applicable
Ensure the employee completes Section 1 of Form I-9 no later than the end of their first day of employment.	<input type="checkbox"/>	<input type="checkbox"/>
Verify the employee entered their full legal name.	<input type="checkbox"/>	<input type="checkbox"/>

*This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your licensed representative at The Timberland Group or legal counsel to address possible compliance requirements. © 2022 Zywave, Inc. All rights reserved.*

If the employee has either two first or last names, confirm the employee included both names.	<input type="checkbox"/>	<input type="checkbox"/>
If the employee has only one last name, ensure the employee entered "N/A" in Other Last Names Used field.	<input type="checkbox"/>	<input type="checkbox"/>
If the employee only has one name, verify the employee entered it in the Last Name field and then entered "Unknown" in the First Name field.	<input type="checkbox"/>	<input type="checkbox"/>
If the employee used a preparer or translator to complete Section 1, ensure the preparer or translator completed, signed and dated the Preparer and/or Translator Certification.	<input type="checkbox"/>	<input type="checkbox"/>
If your organization participates in E-Verify, ensure the employee provided their Social Security number.	<input type="checkbox"/>	<input type="checkbox"/>
If the employee's employment authorization will expire, document the date for reverification.	<input type="checkbox"/>	<input type="checkbox"/>
Verify the expiration date for the employee's employment authorization provided in Section 1 matches the expiration date of the List A or List C documents presented for Section 2.	<input type="checkbox"/>	<input type="checkbox"/>
<b>Verify the employee entered:</b>		
A hyphen or apostrophe in their name, if applicable	<input type="checkbox"/>	<input type="checkbox"/>
Middle initial if the employee has a middle name	<input type="checkbox"/>	<input type="checkbox"/>
Any other legal last name, including a maiden name, if applicable	<input type="checkbox"/>	<input type="checkbox"/>
Current address, including street name and number, city, state, ZIP code and apartment number or letter, if applicable	<input type="checkbox"/>	<input type="checkbox"/>
Date of birth	<input type="checkbox"/>	<input type="checkbox"/>
Citizenship or immigration status; verify this by checking the appropriate box to indicate whether they are a U.S. citizen, a noncitizen national, a lawful permanent resident of the United States or a noncitizen authorized to work in the United States	<input type="checkbox"/>	<input type="checkbox"/>
Alien Registration Number or U.S. Citizenship and Immigration Services Number, Form I-94 Admission Number or foreign passport number, including the country of issuance and date the employment authorization expires	<input type="checkbox"/>	<input type="checkbox"/>

Signature and current date	<input type="checkbox"/>	<input type="checkbox"/>
Completing Section 2 of Form I-9	Complete	Not Applicable
Ensure Section 2 of Form I-9 is completed and signed within three business days of the employee's day of employment.	<input type="checkbox"/>	<input type="checkbox"/>
Ask the employee to present unexpired original documentation or an acceptable receipt that shows their identity and employment authorization from the List of Acceptable Documents. Do not request or direct the employee to present specific documents from the list.	<input type="checkbox"/>	<input type="checkbox"/>
Ensure the employee presents one document from List A or a combination of one document from List B and one from List C.	<input type="checkbox"/>	<input type="checkbox"/>
Physically examine the documents presented by the employee to determine if they appear genuine and relate to the employee presenting them. If the documents do not reasonably appear genuine or relate to the employee, ask the employee to present other documents from the List of Acceptable Documents.	<input type="checkbox"/>	<input type="checkbox"/>
Enter the employee's last name, first name, middle initial and select the correct citizenship or immigration number from Section 1 in the Employee Info Form Section 1 field at the top of Section 2.	<input type="checkbox"/>	<input type="checkbox"/>
Enter the employee's document title, issuing authority, number(s) and expiration date, if any.	<input type="checkbox"/>	<input type="checkbox"/>
Enter the date the employee began or will begin work for pay.	<input type="checkbox"/>	<input type="checkbox"/>
Enter the first and last name, signature and title of the individual completing Section 2, as well as the date they completed the section.	<input type="checkbox"/>	<input type="checkbox"/>
Enter the employer's business name and address.	<input type="checkbox"/>	<input type="checkbox"/>
Return the documents presented to the employee.	<input type="checkbox"/>	<input type="checkbox"/>

Completing Section 3 of Form I-9	Complete	Not Applicable
Ensure Section 3 of Form I-9 is completed if the employee's employment authorization or documentation of employment authorization has expired. If the employee is rehired within three years of the date their Form I-9 was originally completed or if they have legally changed their name, employers may complete Section 3.	<input type="checkbox"/>	<input type="checkbox"/>

Enter the employee’s last name, first name and middle initial in Block A.	<input type="checkbox"/>	<input type="checkbox"/>
Ask the employee to present unexpired original employment authorization documentation from the List of Acceptable Documents.	<input type="checkbox"/>	<input type="checkbox"/>
Physically examine the document presented by the employee to determine if it appears genuine and relates to the employee presenting it. If the document does not reasonably appear to be genuine or relate to the employee, ask the employee to present another document from the List of Acceptable Documents.	<input type="checkbox"/>	<input type="checkbox"/>
Record the document title, document number and expiration document, if any, in Block C.	<input type="checkbox"/>	<input type="checkbox"/>
If the employee is a rehire, enter the rehire date that the employee began or will begin work in Block B.	<input type="checkbox"/>	<input type="checkbox"/>
Enter the first and last name, signature and title of the individual completing Section 3, as well as the date they completed the section.	<input type="checkbox"/>	<input type="checkbox"/>

Form I-9 can be deceptively simple. Despite only being two pages long, the form comes with 15 pages of instructions. Errors on the form can be costly. Mistakes not only increase the amount of time and money organizations must spend to complete the form but also increase their risk of audits, fines and penalties. While strategies may vary, an effective Form I-9 onboarding process can help organizations reduce errors and decrease their legal exposure while saving money.

For more information about Form I-9, contact The Timberland Group today.

## Form I-9 Reverification Letter to Employees

Dear employee,

Federal law requires that we verify the identity and employment eligibility for all its employees working in the United States. When we hired you on [Insert date], you completed a Form I-9 establishing your identity and employability. I am writing to inform you that our records show that your [temporary] work authorization will expire on [Insert date].

Please provide [Insert name or department] with your updated work authorization as soon as possible but no later than [Insert date of expiration of the employee's current work authorization]. If you fail to provide us with your updated documentation by [Insert date of expiration of the employee's current work authorization], you will not be permitted to continue to work. We may [Insert employment outcome (e.g., employer may also be forced to place you on an unpaid leave of absence or terminate your employment)].

If you have questions or wish to discuss the reverification of your work authorization, please contact [Insert name or department]. I thank you in advance for your anticipated prompt attention to this matter.

Best regards,

# CHECKLIST | Form I-9: Internal Audit

Presented by The Timberland Group

Federal law requires employers to hire only individuals who may legally work in the United States—either U.S. citizens or authorized foreign nationals. To comply with the law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification form (Form I-9). Employers must have a completed Form I-9 for every employee hired after Nov. 6, 1986.

Complying with Form I-9 requirements accurately and in a timely manner is difficult. The risk employers face for any errors is real and can be extremely expensive. Employers that fail to comply with Form I-9 requirements can face severe consequences, including civil and criminal penalties.

Despite employers' best efforts, compliance with Form I-9 requirements can be complex and is rarely foolproof. Though they can be time-consuming and labor-intensive, internal audits can be a systematic means for organizations to ensure compliance with federal law.

## Overview

This checklist outlines the steps for conducting an internal audit of your organization's Forms I-9. This checklist is intended to be used as a guide, and not all of the following steps are necessary for an organization's internal audit. The audit process may differ based on your organization's size and other factors; thus, the steps in this list should be modified to meet the unique needs of your organization. This checklist is to be completed by someone trained in Form I-9 requirements, such as an HR representative, to help ensure a smooth audit process.

This checklist provides an overview of a Form I-9 internal audit and should not be construed as legal advice. Due to the complex nature of Form I-9 compliance, employers are encouraged to seek legal counsel to discuss and address specific issues and concerns.

Preparing for the Internal Audit	
Obtain a copy of the U.S. Citizenship and Immigration Services' (USCIS) <i>Handbook for Employers M-274</i> to reference, if necessary.	<input type="checkbox"/>
Download the current version of Form I-9 from USCIS' website.	<input type="checkbox"/>
Create a list of currently employed employees hired after Nov. 6, 1986.	<input type="checkbox"/>
Create a list of all employees terminated in the past three years.	<input type="checkbox"/>
Gather Forms I-9, either original or electronic, for all current employees and employees terminated in the past three years.	<input type="checkbox"/>
Verify there is a completed Form I-9 for all current employees.	<input type="checkbox"/>
Complete Form I-9 for any current employees that do have a completed form.	<input type="checkbox"/>

*This checklist is merely a guideline. It is neither meant to be exhaustive nor meant to be construed as legal advice. It does not address all potential compliance issues with federal, state or local standards. Consult your licensed representative at The Timberland Group or legal counsel to address possible compliance requirements. © 2022 Zywave, Inc. All rights reserved.*

After gathering completed Forms I-9 and creating employee lists, employers can proceed with their internal audit by following the steps below. An internal audit may differ based on an organization’s size and other factors. For smaller employers, it may be best to review every Form I-9. But for larger employers, this may not be practical. Accordingly, if larger employers decide not to review every Form I-9 and review only a sample of its forms instead, they need to ensure the criteria they use to select which forms will be audited are not discriminatory.

Review Section 1 of Form I-9	
Ensure the employee’s name—including past or present last names—address and date of birth are completed.	<input type="checkbox"/>
Verify that the appropriate citizen or immigration status box is checked.	<input type="checkbox"/>
If the employee is a lawful permanent resident, confirm the employee has provided their seven- to nine-digit Alien Registration Number or USCIS Number.	<input type="checkbox"/>
If the employee lacks permanent legal status, verify the employee has provided an Alien Registration Number, USCIS Number, Form I-984 Admission Number or foreign passport number.	<input type="checkbox"/>
Verify that the employee signed and dated Section 1 no later than the first day of their employment.	<input type="checkbox"/>
If someone other than the employee completed Section 1, ensure the preparer or translator section is completed.	<input type="checkbox"/>

Review Section 2 of Form I-9	
Confirm the employee’s name is the same as it appears in Section 1.	<input type="checkbox"/>
Verify that the citizenship or immigration status number is consistent with the information the employee provided in Section 1.	<input type="checkbox"/>
Ensure one document from List A or a combination of one document from List B and List C are listed in Section 2 and all information is recorded accurately.	<input type="checkbox"/>
Check that all documents for Section 2 have been entered under the correct list.	<input type="checkbox"/>
Confirm the employee’s first date of employment is entered and accurate.	<input type="checkbox"/>
Ensure the organization’s representative has signed and printed their name and dated the form within three days of the employee’s first day of employment.	<input type="checkbox"/>
Confirm the organization’s name and full address are recorded.	<input type="checkbox"/>

Verify there are copies of the employee's documents if the organization retains photocopies of employee documents.	<input type="checkbox"/>
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**Review Section 3 of Form I-9**

If the employee was rehired within three years from the date of the previously completed Form I-9, verify Block A and B are completed, along with the name of the organization's representative, signature and title that completed Section 3.	<input type="checkbox"/>
If the employee's work authorization has expired, verify that Block A, B and C are completed, along with the name of the organization's representative, signature and title that completed Section 3.	<input type="checkbox"/>
Entered the employee's new name in Block A if the employee's name has changed.	<input type="checkbox"/>

**Correcting Errors**

For any errors discovered in Section 1, ask the employee to correct the errors by drawing a line through the incorrect information, entering the correct information, and initialling and dating the correction.	<input type="checkbox"/>
For any errors discovered in Sections 2 and 3, draw a line through the incorrect information, enter the correct information, and initial and date the correction.	<input type="checkbox"/>
For forms with multiple errors, complete the section containing multiple errors on a new Form I-9, using the current version of the form. Attach the newly completed form to the original form and include a memo describing any changes and explaining why a new form was completed.	<input type="checkbox"/>
For employees who do not have a completed Form I-9, ask the employee to complete Section 1, inspect the employee's identity and employability documents, and complete Section 2. Enter the employee's original date of hire and the date the form is completed.	<input type="checkbox"/>
For employees who do not have a completed Form I-9 but are no longer employed, draft a memo for each employee missing a Form I-9 explaining why there is no completed form for those employees. Store these memos with the organization's Form I-9 files.	<input type="checkbox"/>

**Audit Log**

Document all errors and corrections made during the internal audit.	<input type="checkbox"/>
Retain the audit log with the organization's Form I-9 files.	<input type="checkbox"/>

## CHECKLIST | FORM I-9: INTERNAL AUDIT

Internal audits can be expensive, time-consuming and tedious for any organization. This is especially true for organizations with a high number of employees or organizations in industries with high turnover rates, such as restaurants. However, internal audits can be worth the time and effort; when done regularly, they can improve compliance with federal law, increase operational and administrative efficiency and save your organization time and money by helping to avoid government audits, fines and penalties.

For more information about Form I-9, contact The Timberland Group today.

## Letter to Employees to Complete or Correct Form I-9 Resulting from Internal Audit

Dear employee,

Federal law requires to verify the identity and employment eligibility of all its employees working in the United States. It has recently come to 's attention that your Form I-9 is [Insert the current status of the employee's Form I-9 (e.g., was never completed, contains errors or is missing information)].

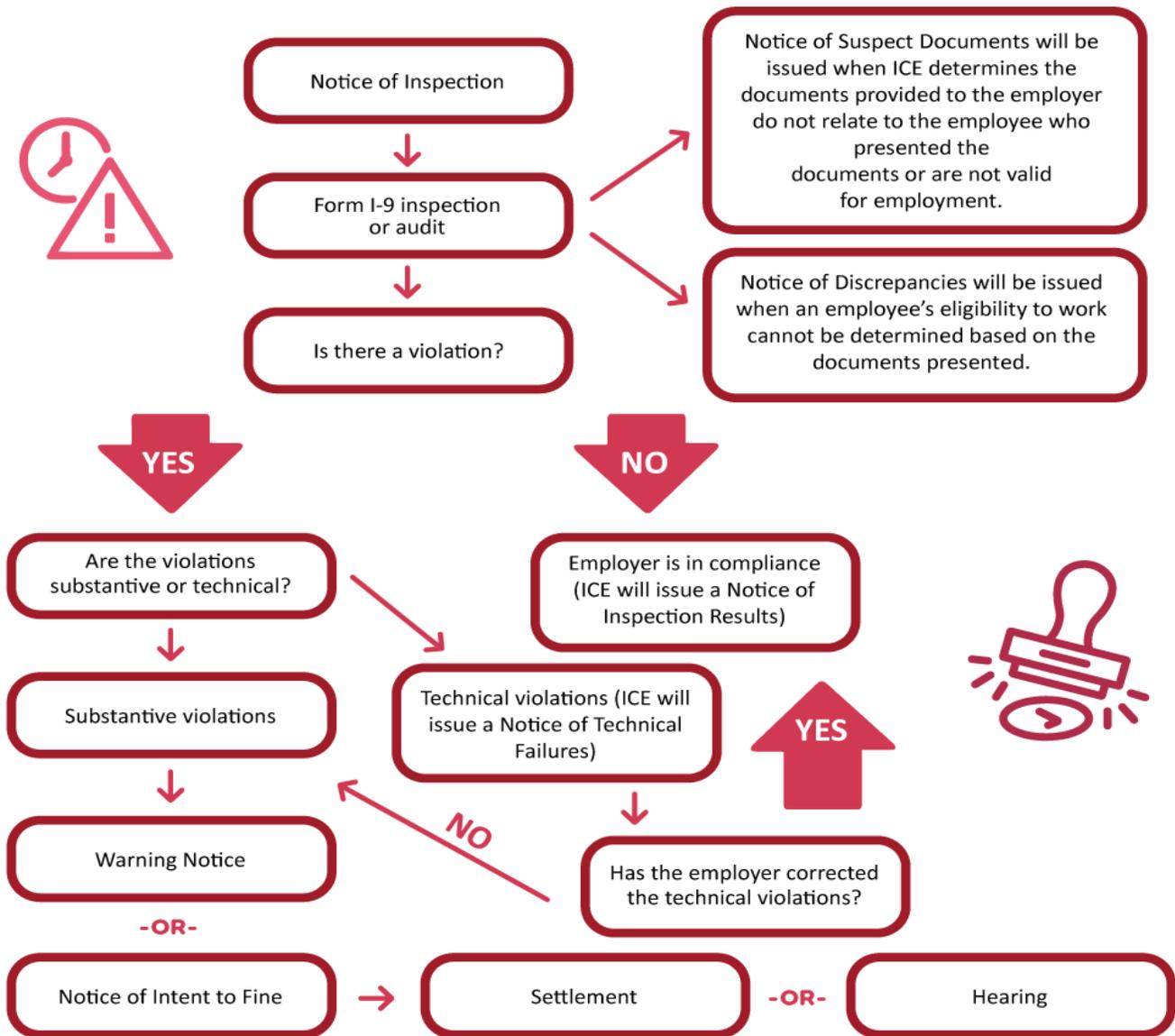
I am writing to request that you provide [Insert name or department] with [Insert the information required (e.g., missing information or documents to be presented)] [Insert where and how the information can be provided to the employer] as soon as possible but no later than [Insert date]. If you fail to provide us with your updated documentation by [Insert date], you will not be permitted to continue to work with this company. may [Insert employment outcome (e.g., employer may also be forced to place you on an unpaid leave of absence or terminate your employment)].

I apologize for any inconvenience this may cause you. If you have questions or wish to discuss this matter, please do not hesitate to contact [Insert name or department]. I thank you for your prompt attention to this matter.

Best regards,

# Form I-9 Inspection Process

Employers may be penalized for failing to meet Form I-9 requirements. If U.S. Immigration and Customs Enforcement (ICE) believes an employer has committed a violation, it will serve the employer with a Notice of Inspection, which is a subpoena to review the employer's Forms I-9 and related documents. ICE will review each Form I-9 to identify any substantive or technical paperwork violations. The following is an overview of ICE's Form I-9 inspection process.



After completing its audit, if ICE concludes the employer's documents contain less than 10% errors, it will typically issue a Warning Notice but no penalty. If ICE determines penalties are warranted, it will issue a Notice of Intent to Fine. Employers may settle the matter and pay the fine or request a hearing before an administrative law judge.