

HOW TO CONDUCT A USCIS FORM I-9 INTERNAL SELF-AUDIT

Identifying and Correcting Problems Before an Agency Audit


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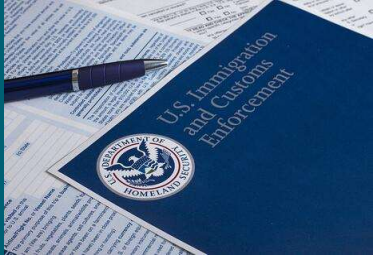
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TODAY'S TOPICS AND AGENDA

- USCIS FORM I-9 & ICE AUDITS: A PRIMER
- CONDUCTING AN HR FORM I-9 INTERNAL SELF-AUDIT
- TYPES OF FORM I-9 COMPLIANCE VIOLATIONS: Common Problems to Watch Out For
- HOW TO MAKE CORRECTIONS ON THE USCIS FORM I-9

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USCIS FORM I-9 & ICE AUDITS: A PRIMER

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WHY IS AN I-9 FORM REQUIRED?


- All U.S. employers must have a **Form I-9** on file for all current employees.
- Employers should be using the Form I-9 with revision date **10/21/2019**, which was released to the public on January 31, 2020.
- Employers must have begun using the revised version for all new hires and reverifications after **April 30, 2020**.
 - **Exception:** Employers are not required to have Forms I-9 for employees hired on or before November 6, 1986.
- The Employer may delegate the authority to complete Form I-9 to a responsible agent but will still retain liability for any errors.
- Visit [I-9 Central What's New](#) for updates.

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EMPLOYER RESPONSIBILITIES

- Fill out and keep a Form I-9 for every person they hire for employment in the United States, **as long as the person works for pay or other benefits.**
- Ensure that newly hired employees complete and sign Section 1 of Form I-9 no later than the first day of employment.
- Have the employee present an original document(s) that show his or her identity and employment authorization within 3 business days of the date employment begins.
- Retain an employee's completed Form I-9 for as long as the individual works for the employer. However, Form I-9 does not need to be filed with any federal agency.
- Make Forms I-9 available within 3 days of an official request for inspection.



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EMPLOYER RESPONSIBILITIES

PREVENTING DISCRIMINATION

- The anti-discrimination provisions of the INA are enforced by:
 - **Department of Justice Civil Rights Division**
 - **Immigrant and Employee Rights Section**
- Employees may contact the **Immigrant and Employee Rights Section (IER)** to obtain additional information regarding employment discrimination and employee rights and responsibilities (*callers may remain anonymous*)
 - **1-800-255-7688 (TDD: 1-800-616-5525)**
- Employers may also contact IER (*callers may remain anonymous*)
 - **1-800-255-8155 (TDD: 1-800-362-2735)**

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BASIC I-9 REQUIREMENTS/REGULATIONS

- Do NOT specify which documents you will expect/accept from the employee.
- Do not require more or different documents than minimally required.
- Only original documents are acceptable for verification purposes.
- Do not refuse to accept documents that reasonably appear to be genuine.
- Copies of supporting documents are not required for citizens but are required for permanent residents and non-residents to be submitted with the I-9.
- **White Out** (correction fluid or tape) may NOT be used on the I-9 form.
- Non-citizens who have a "999" number assigned to them must provide a valid social security number within 30 days of hire.
- Certain documents listed on the I-9 list are no longer acceptable because of E-Verify. List B documents must include a photograph.
- All documents must be current and valid - *expired documentation is not acceptable.*

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WHO DOES NOT COMPLETE A FORM I-9?

- Employees hired on or before November 6, 1986.
- Employees transferring from one distinct unit of an employer to another distinct unit of the same employer.
- Employees returning from temporary furlough for lack of work.
- Independent Contractors.
- Volunteers (Unless they are receiving payment (other than monetary) such as for food or lodging, etc.)



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WHEN IS AN EMPLOYEES FORM I-9 COMPLETED?

Section 1

- Completed by the employee no later than the first day of employment for pay.

Section 2

- Employers must complete and sign Section 2 of Form I-9, and provide Employment Eligibility Verification, within 3 business days of the date of hire of their employee (the hire date means the first day of work for pay). So, if your employee began work for pay on Monday, you must complete Section 2 by Thursday of that week.

Section 3

- Completed by the Office of Human Resources in the event of a break in service or re-verification of temporary documents.

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CONDUCTING AN HR FORM I-9 INTERNAL SELF-AUDIT


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I-9 INTERNAL AUDIT GUIDANCE


- In 2015, the Office of Special Counsel of the U.S. Dept. of Justice and the Dept. of Homeland Security (DHS) released **“Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits”**
- This is a **MUST-READ** document for any institution planning an internal audit!
- Six pages of Q&A format information (*Included in Handouts*)
- Biggest takeaway: internal audits must not be discriminatory or retaliatory themselves - **criteria used for own internal audit could itself potentially become subject of federal audit or sanctions**

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U.S. Immigration and Customs Enforcement



Office of Special Counsel for Immigration-Related Unfair Employment Practices

Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits

This guidance is intended to help employers structure and implement internal audits in a manner consistent with the employer sanctions and anti-discrimination provisions of the Immigration and Nationality Act (INA), as amended 8 U.S.C. §§ 1324a, 1324b, and does not insulate employers from liability under either provision.

What is the appropriate purpose and scope of an internal audit of Form I-9?

While not required by law, an employer may conduct an internal audit of Forms I-9 to ensure ongoing compliance with the employer sanctions provision of the INA. An employer may choose to review all Forms I-9 or a sample of Forms I-9 selected based on neutral and non-discriminatory criteria. If a subset of Forms I-9 is audited, the employer should consider carefully how it chooses Forms I-9 to be audited to avoid discriminatory or retaliatory audits, or the perception of discriminatory or retaliatory audits. An employer should note that penalties for violations of the employer sanctions provision and the anti-discrimination provision of the INA may be imposed even if an internal audit has been performed.

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I-9 INTERNAL AUDIT GUIDANCE

Several highlights (read entire document!)

- Clearly define purpose, scope and protocols first
- Notify employees in writing of the above
- Correcting errors: only employee corrects Section 1, and only employer corrects Section 2 or 3
 - No white-out, erasing content or back-dating
- When to complete newest version of the Form I-9
- Employer may NOT request specific documents to correct (or complete new) I-9 form
- Caution employers against requiring all employees to complete new forms, if not justified -could raise discrimination concerns

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I-9 INTERNAL AUDIT GUIDANCE

Several highlights (Continued)


- E-Verify related guidance
- Must provide "reasonable" amount of time to allow employees to provide documentation for I-9
- Social Security Number Verification Service (SSNVS in the SSA) is NOT to be used as ANY part of I-9 process
- **See also Jan 7, 2016 letter from OSC/DOJ re: Internal Audits (Included in Handouts)**

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WHAT ABOUT I-9 ICE AUDITS?

- U.S. Immigration and Customs Enforcement (ICE) conducts I-9 inspections to find and fine Employers who do not follow immigration laws re: employment eligibility verification.
- The current enforcement strategy includes an expanded use of civil penalties, employer audits, and debarment, as well as the criminal prosecution of employers who knowingly break the law.
- In 2017, the largest judgment in U.S. history was levied against Asplundh Tree Expert Co. for illegally employing undocumented immigrants. **The company had to pay a total of \$95 million in forfeitures and civil claims.**



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DHS-ICE I-9 INSPECTION – What May Be Inspected?

- I-9 Forms for current employees hired after Nov. 6, 1986.
- I-9 Forms for terminated employees within the required retention period.
- Employee listing for current and terminated employees.
- Quarterly wage and hour reports.
- Payroll data for current and terminated employees.
- SSA Mismatch correspondence.
- E-Verify and/or SSNVS documents.
- Business information (Employer ID number, owner’s SSN/address, business licenses, etc.)

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DHS-ICE FORM I-9 INSPECTION PROCESS

TECHNICAL VIOLATIONS VS. SUBSTANTIVE VIOLATIONS

- **Technical violations** typically involve paperwork errors or discrepancies in certain information. The first time, these errors may result in no fines, or small fines.
 - ICE gives employers time to correct the technical errors and return the documentation.
 - Left unrevised, however, technical violations could become substantive violations.
- **Substantive violations** are the more egregious violations of the law, and these typically result in a fine depending on the nature of the violation.
 - These violations include repeated and unresolved errors on Form I-9, willful distortion of facts, or the submission of false documentation to ICE.

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DHS-ICE FORM I-9 INSPECTION PROCESS

Examples of technical violations include:

- Failure to ensure an individual provides her Employee Name, address, or birth date in Section 1;
- Failure to ensure the individual dates Section 1 at the time employment begins;
- Failure to ensure a preparer and/or translator provide his or her name, address, signature, or date;
- Failure to provide the document title, identification numbers and expiration dates of proper List A documents or proper List B and List C documents in Section 2 or 3, but only if legible copies of the documents are retained with the forms and presented at the I-9 inspections;
- Failure to provide the title, business name and address in Section 2; or
- Failure to provide the date of rehire in Section 3.

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DHS-ICE FORM I-9 INSPECTION PROCESS

On ICE’s website, [the agency maintains a fine schedule](#) outlining what an employer might be subject to pay for I-9 violations. These are the fees listed on the tables:

Knowing Hire / Continuing to Employ Fine Schedule
(Effective for penalties assessed after April 2019 whose associated violations occurred after November 2, 2015)

Knowing Hire and Continuing to Employ Violations	Standard Fine Amount		
	First Tier	Second Tier	Third Tier
	\$573 - \$4,586	\$4,586 - \$11,463	\$6,878 - \$22,972
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

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DHS-ICE FORM I-9 INSPECTION PROCESS

On ICE's website, [the agency maintains a fine schedule](#) outlining what an employer might be subject to pay for I-9 violations. These are the fees listed on the table:

Substantive / Uncorrected Technical Violation Fine Schedule
(Effective for penalties assessed after April 5, 2019 whose associated violations occurred after November 2, 2015)

Substantive Verification Violations	Standard Fine Amount		
	1st Offense \$230 - \$2,292	2nd Offense \$230 - \$2,292	3rd Offense + \$230 - \$2,292
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

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DHS-ICE FORM I-9 INSPECTION PROCESS

ICE will notify the audited party, in writing, of the results of the inspection once completed. The following are the most common notices:

- **Notice of Inspection Results** – also known as a "compliance letter," used to notify a business that they were found to be in compliance.
- **Notice of Suspect Documents** – ICE has determined an employee is unauthorized to work
- **Notice of Discrepancies** – unable to determine an employee's work eligibility.
- **Notice of Technical or Procedural Failures** – identifies technical violations, giving ten business days to correct the forms. After ten business days, uncorrected technical and procedural failures will become substantive violations.
- **Warning Notice** – issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer.
- **Notice of Intent to Fine (NIF)** – may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations.

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BEST ADMINISTRATIVE PRACTICES IN I-9 COMPLIANCE

PLAN AND PREPARE FOR AN I-9 AUDIT before you are noticed and audited by DHS-ICE.

- If you are targeted for an audit, it demonstrates a good faith effort to comply with the law and remediate any errors that you might have made in capturing or updating Form I-9 information.
 1. Plan Ahead
 2. Stay Up-to-Date and current on Form I-9 as though DHS-ICE is coming
 3. Document and follow your I-9 administrative policies and procedures
 4. Develop a timeline and assign responsibility for self-audit
 5. Organize your data and your Forms I-9
 6. Perform your self-audit

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BEST ADMINISTRATIVE PRACTICES IN I-9 COMPLIANCE

Develop and Maintain an I-9 & E-Verify Administrative Resource Binder

- Include the following types of documents in the administrative section:
 - A copy of the *Handbook for Employers* and Form I-9 instructions. (The most recent Form I-9, Instructions for Form I-9 and the *Handbook for Employers* are available at the [I-9, Employment Eligibility Verification](#) page of the USCIS website).
 - Documentation or spreadsheets for tracking reverifications and temporary visas that will expire.
 - Security policies and procedures if the employer maintains I-9 records electronically.
 - Documentation of the results of any internal Form I-9 audits conducted.
 - This helps support any claims that the organization has taken proactive steps to correct past mistakes or if I-9 documents are somehow lost.
 - This is also where to document what occurred and why new Forms I-9 were completed well after the hire date. This documentation could make a difference in the amount of financial penalties assessed to an organization if it is subjected to a formal Form I-9 audit.

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BEST ADMINISTRATIVE PRACTICES IN I-9 COMPLIANCE

- Centralization of Authority and Responsibility for I-9
- Prepare I-9 Administrative Resource Binder **(See Previous Slide)**
- Centralization of Storage – Active and Inactive (Binders)
- Written hiring and employment eligibility verification policy & procedure that addresses completion of the I-9 form
- Establish an annual training program related to the hiring and employment verification process, including completion of the I-9
- Conduct yearly preventative internal Form I-9 self-audits, consider using an external auditing firm every few years.
- Retain Form I-9s separately from personnel records for ease of internal auditing and ease of retrieval in the case of an audit or inspection.

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BEST ADMINISTRATIVE PRACTICES IN I-9 COMPLIANCE

- Ensure Form I-9s are filed and maintained in three groups:
 1. **terminated employees,**
 2. **current employees, and**
 3. **employees that need to be reverified.**
- Keeping a reliable “tickler” reminder system before certain employment eligibility documents expire
- Include contractual provisions that subcontractors are responsible for the proper employment verification and completion of Form I-9s for all of their employees assigned to the employer's place of business.
 - Have subcontractors certify that they enforce strict immigration policies.
 - Require subcontractors to submit to third-party employment verification audits.
 - Include an indemnity provision in the subcontractor's contract whereby the subcontractor agrees to defend and indemnify the employer for any liability arising out of claims that the subcontractor's employees are not authorized to work.


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GUIDELINES FOR CONDUCTING AN I-9 SELF-AUDIT

But before we look at the steps in the self-audit process:

COMPLETE FORMS CORRECTLY WITH EMPLOYEES TO BEGIN WITH.

- Filling out the I-9 form correctly is the first step in preparing for an audit, and it should be part of your employee onboarding process.
- Ensure that all I-9s are properly completed, organized, and retained.



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BEFORE CONDUCTING AN I-9 SELF-AUDIT

Ensure your internal audit strategy doesn't violate discrimination laws. Your Self-Audit process strategy should follow these guidelines:

1. If you use E-Verify, you must run cases for all your employees. Do not go back and run E-Verify cases for employees hired when your company was not enrolled in the E-Verify service.
2. If you conduct a selective I-9 audit (we recommend auditing all employees' I-9 forms), be careful to ensure true statistically random selection.
3. If you need additional or updated employment authorization documents, you must allow the employee to choose his or her own forms of I-9 acceptable documents.
4. Not every expired document can be updated, so consult the U.S. Citizenship and Immigration Services' M-274, Handbook for Employers, if you are uncertain.
5. Have translators/preparers available for employees who don't speak English, if applicable.

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STEP 1 – Gather Documents for I-9 Self-Audit

- **Generate lists of all current and terminated employees hired since November 6, 1986.**
 - If auditing a selection of I-9 forms, verify the selection is truly random – e.g., using Excel's functions and documenting your selection process.
 - Lists should show last name, first name, date of hire, date of termination, and some distinguishing fact, e.g., SSN or DOB, in case two employees have the same name.
 - Individuals with more than one hire date will appear on the list once for each date of hire, and each prior hire should also show a termination date, so you can determine which forms you may purge.
- **Gather and organize completed I-9 forms.**
 - Match to generated list
 - Indicate which version of the I-9s for current employees and former employees has been used; check I-9 date against hire date
 - Check that there is a Form I-9 on file for every current employee who performs work for the employer in the United States.

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STEP 1 – Gather Documents for I-9 Self-Audit

- **Generate a list of current employees for whom there isn't a Form I-9.**
- Employers should not have an I-9 for nonemployees who may perform work, such as volunteers, independent contractors or consultants.
 - Assuming proper classification of these individuals, if you have an I-9 for these individuals, it should be removed from the employer's official Form I-9 file.
- Employers should have two files of I-9s:
 1. Forms I-9 (electronic or paper) for current employees.
 2. Forms I-9 (electronic or paper) for terminated employees.
- Each of these I-9s will be handled separately and in priority order.
 - Current employees who have no Form I-9 on file are the highest priority, as their eligibility to work in the United States should be verified as quickly as possible.
 - The next highest priority will be to review current employees' Forms I-9 on file to ensure they have been completed properly.
 - The lowest priority will be handling I-9s of terminated employees.

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STEP 2 – Calculate the I-9 Form Retention Dates

- **Compare date of hire, date of termination, and the date of your self-audit.**
 - The easiest way to do this is to write down the date that is three calendar years prior to the audit date (the target hire date) and the date that is one calendar year prior to the audit date (the target termination date).
 - Recommend using standard I-9 Retention form as a part of your employee separation procedures (*Sample attached in handouts*)
- **Forms can be discarded for persons hired before the target hire date whose employment ended before the target termination date.**
- **Highlight or cross off the names of the employees on the list whose I-9 forms may be purged.**
- **Separate forms to be purged, and shred them per FACTA requirements**

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STEP 3 – Obtain I-9s for Current EEs Who Are Missing I-9s

- All employees hired on or after Nov. 6, 1986, and who do not have an I-9 on file will need to be contacted and instructed to bring documentation from List A or Lists B and C of **the current Form I-9.**
- Communication with each employee should be apologetic but firm.
 - Employers should apologize that for whatever reason this documentation was lost or not collected at the beginning of employment.
 - Explain that the form must be completed under federal law and that the employee will not be able to continue working for the organization if he or she cannot provide these documents by **<SPECIFIC DATE>**.
 - Requiring that the employee bring the items with him or her the next day he or she works is suggested.
 - Copies of all communications sent to employees who are missing I-9s should be kept in the Form I-9 audit file.

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STEP 3 – Obtain I-9s for Current EEs Who Are Missing I-9s

- Sit down with the employee and complete the Form I-9 immediately.
- Use the current I-9, NOT the one from original date of hire.
- Employers must view the originals (not copies) of their documents.
- Current dates should be used when completing the Form I-9. **DO NOT BACK-DATE** the form.
- The date of hire is the employee's actual date of hire, which may have been years earlier.
- Employers should attach a short memo to the corrected Form I-9 explaining that there was no I-9 on file and that the employee completed the I-9 at the time of the audit.
 - This demonstrates that you are making a good faith effort to be in compliance.
- The employee's name can be crossed off the audit list, and the employer can add the completed I-9 to its file of Forms I-9 for current employees.

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STEP 3 – Obtain I-9s for Current EEs Who Are Missing I-9s

- If an employee cannot find their documents, the USCIS Handbook for Employers indicates that certain receipts may be acceptable for a specific period of time in lieu of the actual document.
 - Generally, a receipt to apply for replacement of a lost, stolen or damaged document may be acceptable for 90 days.
 - There are also document receipts that may be presented for refugees and lawful permanent residents.
 - Receipts that fall outside of the requirements established by USCIS may not be an acceptable replacement for a List A, List B or List C document.
- If an employee does not provide the required documents within the appropriate time frame, the employer should either terminate his or her employment or place the employee on a leave of absence.

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STEP 4 – Audit Forms I-9 of Current Employees

- Use the [USCIS Handbook for Employers M-274](#), the USCIS website titled [I-9 Central](#), which provides additional information on the entire I-9 process.
- Systematically check each I-9 form for compliance - work in the same order as the names on the master list.
 - Check & initial on the list next to the appropriate name when review is completed.
- Separate the I-9s into two files. The first file contains I-9s that have been completed properly; these should be filed away. The second file contains I-9s that have errors.
 - Flag problems with the forms using stick-on notes.
 - Be aware that forms may have multiple problems.
- Technical errors may be corrected on the existing I-9 form, but substantive errors may require completing a new I-9. **See USCIS resource on [correcting Form I-9](#).**
- Clearly show a change is a correction; use a differently colored ink and ensure changes are initialed and dated with the current date.

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STEP 4 – Audit Forms I-9 of Current Employees

Employers need to check the following information in each section of the Form I-9:

Section 1

- The name, address, other names used and date of birth must be completed.
- For the current Form I-9, the Social Security number is voluntary except for employers that participate in the E-Verify program.
- E-mail address and telephone number are optional fields.
- The employee must identify his or her immigration status and sign and date the form.
- The preparer or translator section is to be completed **only** if someone other than the employee completed Section 1 on behalf of the employee.

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STEP 4 – Audit Forms I-9 of Current Employees

Section 2

- The proper document must be entered into the appropriate column. For example, employers must ensure that a List B document is in fact listed under List B and not under List C or List A.
- All required information must be entered for each document.
- The documents listed must satisfy the requirement to provide both proof of identity and proof of eligibility to work in the U.S.
- The certification section must be completed, including the date the employee first began work.
- A representative of the company must sign and date the form with the date the employee's documents were examined and section 2 was completed.

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STEP 4 – Audit Forms I-9 of Current Employees

Section 3

- This section should be completed only if the employee's work authorization expired or if the employee has been rehired. It can also be completed if the employee had a name change, but this is not required. In most cases, Section 3 will be blank.
- Expired permanent resident cards and List B documents from the Form I-9 do not need to be reverified. These documents must not be expired when the I-9 is initially completed, but their subsequent expiration does not trigger the requirement to reverify the I-9.

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

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

1. **Medison** 2. **James** **A**

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 provided document(s), the document(s) have examined appear to be genuine and to relate to the individual.

3. Signature of Employer or Authorized Representative 4. Today's Date (mm/dd/yyyy) Name of Employer or Authorized Representative

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COMPLIANCE

TYPES OF FORM I-9 COMPLIANCE VIOLATIONS: COMMON PROBLEMS TO WATCH OUT FOR

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COMMON FORM I-9 MISTAKES



Incomplete Forms

Employers may forget to add the candidate's name in section-2 or miss filing the section that involves preparer/ translator.



Missing Deadlines

Sometimes employers fail to complete the Form I-9 within 3 business days of employment.




Signature & Date

Employer or employee may forget to sign the form after completion, making it invalid.

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COMMON FORM I-9 MISTAKES




Incorrect I-9 version

Using the correct version of Form I-9 which is valid at the employee's date of hire is as important as completing the form.



Missing re-verification

Using the correct version of Form I-9 which is valid at the employee's date of hire is as important as completing the form.



Incorrect supporting documents

Employers may fail to identify the authenticity of supporting documentation presented and may accept incorrect documents.

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COMMON FORM I-9 MISTAKES

The USCIS gives the following list as best practices concerning your I-9. Make sure that:

- All information is clear and legible
- Your payroll records match the section 2 employee start date
- No inappropriate marks, tears, or holes impede the document's legibility; including using "white-out"
- Copies of all forms and documents are able to be easily read
- Any abbreviations or acronyms are explained or otherwise understood
- All information that applies to the situation is complete
- You are using the most recent iteration of the I-9 form
- You have a version of the I-9 that is in English (except for Puerto Rico)
- You are not discriminating against any employee in this regard

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COMMON FORM I-9 MISTAKES - EMPLOYERS

- Employers do not enter the approved documentation on the I-9 form.
- Employers fail to sign and date the Certification, Section 2
- Employers fail to enter the specific document number, expiration date, issuer, or title on the I-9 form.
- Omitting the Alien Registration Number when the employee is a permanent resident.
- Accepting incorrect documents for verification.
- Employers do not enter the initial date of hire in certification clause.
- Employers do not enter the name, address, or title of the business
- If the employer is not using E-Verify, he/she is not obligated to enter the Social Security numbers in Section 1. If the employer is utilizing E-Verify, a Social Security number is required.
- Employers fail to submit Section 2 after the third business day of initial employment.
- Employers incorrectly submit Section 3 after the employee has had his/her work authorization expire.
- Allowing untrained staff to administer I-9s.

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COMMON FORM I-9 MISTAKES - EMPLOYEES

- Employees inaccurately enter their name, date of birth, or address.
- When employees select "Lawful Permanent Resident" they do not enter the USCIS number which should immediately follow.
- The Form I-94 section is not entered correctly. The USCIS number is typically not entered.
- Employees fail to sign the attestation
- Employees do not enter the initial day of employment
- Employees fail to indicate residency status
- If the I-9 form is assisted by a translator, the employee fails to have the translator sign, print his/her name, and date the form.

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COMMON FORM I-9 MISTAKES - OTHER

Employers and Employees also make mistakes relating to completion and general organization.

- Not completed within timeframe
- Failure to sign and date documentation verification
- Inaccurately entering employee residency status
- Failure to complete both sides of application
- Missing sheets
- White Out (or similar) is not permitted anywhere on the I-9 form.
- Employers use the incorrect version of the I-9 form.
- Failure to comply with the photocopying policy. The employer cannot decide to only make copies of some employee's verification documentation. If the employer wishes to keep copies, he/she must make copies for all the employees.

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COMMON FORM I-9 MISTAKES - OTHER

Employers don't follow retention requirements.

Forms I-9 must be retained for:

- **3 years after** the date you **hire** an employee
- or**
- **1 year after** the date employment **terminates**

whichever is later.

- **EXAMPLE:**
 - John Smith was hired on November 1, 2018, and on July 5, 2020, employment was terminated.
 - November 1, 2018 + 3 years = November 1, 2021
 - July 5, 2020 + 1 year = July 5, 2021
 - The retention date is November 1, 2021

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COMMON FORM I-9 MISTAKES - OTHER

Employers and Employees also make mistakes relating to completion and general organization.

- **Are you using the most up-to-date I-9 form?**
 - It's best to not print out a large stack of forms at once.
 - Visit [USCIS.gov](https://uscis.gov) to download the latest I-9 forms - DO NOT KEEP COPIES IN A DRAWER
- **Triple-check:** Employees and employers should take one more look at Form I-9 before filing. Review the entire form for clarity, legibility and completion.

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COMMON FORM I-9 MISTAKES - Section 1

- Has the employee signed all required sections of Form I-9? If there is no signature, the attestation is not complete.
- Are you doing too much? An employer's role in filling out the I-9 is to review the document for completeness. DO NOT ask for specific documents to verify the accuracy of information provided in section 1 > discriminatory practice.
- I's dotted, T's crossed, Boxes filled out? -Don't forget about the last two certification boxes:
 - Number on individual's green card
 - Number on EAD or I-94 and the expiration date of work permission
- **Missing deadlines:** Section 1 of Form I-9 must be filled out on the new hire's first day of work.
- **IMPORTANT:** The employer assumes any liability for false statements in Section 1 if the employee fails to sign the I-9 and the employer accepts the Form without signature.

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COMMON FORM I-9 MISTAKES – Section 2

- Don't jump the gun: Do not ask an employee to complete I-9 prior to offering employment. An employer may administer the I-9 on a new hire's first day of work or as soon as an offer of employment has been accepted.
- Documentation issues:
 - Employer forgets to enter acceptable List A or acceptable List B and C documents.
 - Employer does not verify if documents belong to List A, List B or List C.
 - Over-documenting a section. Remember, if a List A document is provided, a List B or List C document is not required. If the employee does not provide an acceptable List A document, then a List B and List C document would be required. Never ask for a List A and a List B or C document, or else it can be considered over-documenting.
 - Employer forgets to enter the document title, issuing authority, number(s) or expiration date.

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COMMON FORM I-9 MISTAKES – Section 2

- Make sure all sections are completed:
 - Employer forgets to enter business title, name or address.
 - Employer forgets to enter date employment began.
 - Employer forgets to sign, date and print name in certification.
- **Missing deadlines:** Employers must complete section by the 3rd business day following the first day of employment.
 - **IMPORTANT:** If an employee is hired for less than three days of work, section 3 must be completed on day 1.

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COMMON FORM I-9 MISTAKES – Section 3

- **Filing errors:** Employer does not maintain a tickler file system causing Section 3 to not be completed in a timely fashion.
- Limited work authorization document reminders: Employers fail to remind employees at least 120 days prior to when document expires. Failure to do so can cause re-verification to not occur on the day of expiration.
- Employer re-verifies a List B document or "Green Card."
- Employer forgets to enter document title, number or expiration date for an acceptable document presented.
- Employer forgets to enter a date of rehire, if applicable.
- Employer forgets to enter an employee's new name, if legally changed.
- Employer does not sign or date the certification.

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FORM I-9 MISTAKES – Examples of Technical Violations

- Failure to ensure an individual provides her Employee Name, address, or birth date in Section 1,
- Failure to ensure the individual dates Section 1 at the time employment begins,
- Failure to ensure a preparer and/or translator provide his or her name, address, signature, or date,
- Failure to provide the document title, identification numbers and expiration dates of proper List A documents or proper List B and List C documents in Section 2 or 3, but only if legible copies of the documents are retained with the forms and presented at the I-9 inspections,
- Failure to provide the title, business name and address in Section 2, or
- Failure to provide the date of rehire in Section 3.

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FORM I-9 MISTAKES – Examples of Substantive Violations

- Failure to timely prepare or present the I-9,
- Failure to ensure that the individual provides his or her printed name in Section 1 of the Form I-9,
- Failure to ensure that the individual checks a box in Section 1 attesting to whether he is a citizen or national of the United States, a lawful permanent resident, or an alien authorized to work until a specified date,
- Failure to ensure that an alien authorized to work provides his or her alien number in Section 1, if the number is not provided in Section 2 or 3, or on a legible copy of the document that is retained with the I-9 form,
- Failure to ensure the individual signs the attestation in Section 1,
- Failure to complete Section 2 within 3 business days of hire.

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FORM I-9 MISTAKES – Examples of Substantive Violations

- Failure to review and verify a proper List A document or proper List B and List C documents in Section 2 or 3,
- Failure to sign the attestation in Section 2,
- Failure to date Section 2 of the Form I-9,
- Failure to date Section 2 within three business days of the date the individual begins employment or, if the individual is employed for three business days or less, at the time employment begins, or
- Failure to sign and date Section 3 as well as to date Section 3 of the Form I-9 not later than the date of the expiration of the work authorization.

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HOW TO MAKE CORRECTIONS ON THE USCIS FORM I-9

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

- Make a list of the I-9 forms that contain errors to be used as the official audit log showing the employer is making a good faith effort to ensure Form I-9 compliance.
- The log should contain three columns: employee's name, the error(s) and the actions that were taken to rectify the error.
- As you work through each incorrect I-9, Use the [USCIS Handbook for Employers M-274](#), the USCIS website titled [I-9 Central](#), for reference.
 - ***"The best way to correct Form I-9 is to line through the portions of the form that contain incorrect information, then enter the correct information. Initial and date your correction. If you have previously made changes on Forms I-9 in White-Out instead, USCIS recommends that you attach a note to the corrected Forms I-9 explaining what happened. Be sure to sign and date the note."***

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

- When making corrections, it should be exceedingly clear when the original form was completed and when the correction was made.
- Following correct compliance procedures means that both dates should be obvious to anyone reading the document, regardless of his or her level of familiarity with your company.
- If you have retained photocopies of documents that don't need to have been updated, you may be able to obtain the information needed to correct many deficiencies from those copies.
- You may also use information from personnel files to correct the forms.
- If anything is added to Section 1 of the form, remember to complete the Preparer/Translator portion of the form if applicable.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

- Use the audit date as the date to insert in the Preparer/Translator portion of the form, since it is better to have a "late completion" problem than missing information on the form.
- Do not white-out or cover up the original information on the form; instead, simply cross out the incorrect information.
- If you are adding information to Section 2 of the form, initial and date the corrections. Include the words "Self-Audit" as well.
- If necessary, ask employees to sign or date Section 1 of the form or present correct documents.
- As forms are corrected, cross out deficiencies on the "stick-on" notes. When all items are crossed out, remove the notes.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

- When the form is correct, refile it.
- Annotate or highlight the master audit employee list to show forms that have been corrected.
- There may be some deficiencies that simply cannot be cured.
 - For example, you may have terminated employees from whom you accepted invalid documents, but the form cannot yet be discarded.
 - Annotate the list to show a "major" problem, remove the "stick-on" note, and re-file the form.
- We recommend that you create a "tickler" or reminder file or some other system for reminding you to discard defective forms when you no longer need to retain them.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

SECTION 1: If minimal omissions or inaccurate information exist

- **The employee (or a translator/preparer if necessary) must make the change.**
- The employee should draw one line through the inaccurate information, enter or write the correct information, and initial and date the correct information.
- If the employee needs assistance, the translator/preparer should draw one line through the incorrect information and enter or write the correct information.
- Then the employee should initial and date the correct information, and the translator/preparer should initial and date the correction next to the employee's initials.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

SECTION 1: If errors, omissions, or inaccurate information exist

- **The employee (or a translator/preparer if necessary) must make the change.**
- The employer should ask the employee to correct the error. When doing so, the employee should:
 1. draw a line through the incorrect information;
 2. enter the correct or omitted information; and
 3. initial and date the correction or omitted information.
- If an employee needs assistance correcting or entering omitted information in Section 1, the employee can have a preparer and/or translator help with the correction.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

SECTION 1: Continued

- The preparer and/or translator should:
 - draw a line through the incorrect information and enter the correct information or note the omitted information;
 - have the employee initial and date the correction or omitted information, if the employee is able; and
 - initial and date the correction next to the employee's initials.
- If the preparer and/or translator did not previously complete the preparer and/or translator certification block, he or she should:
 - complete the certification block; or
 - if the certification block was previously completed by a different preparer and/or translator he or she should:
 - draw a line through the previous preparer's and/or translator's information; and
 - enter the new preparer's and/or translator's information (and indicate that he or she is the preparer and/or translator "for corrections").

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

Sections 2 or 3: If minimal omissions or inaccurate information exist:

- The employer must make the change.
- If there are not multiple errors, the proper way to correct the form is to:
 1. draw a line through the incorrect information;
 2. enter the correct or omitted information; and
 3. initial and date the correction or omitted information.
 4. Include the words "Self-Audit" as well.
- If there are multiple errors, you may complete sections 2 and/or 3 on a new Form I-9 and attach it to the previously completed form. You should also attach to an existing Form I-9 an explanation of the changes made or why a new Form I-9 was completed, and sign and date the explanation.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

Sections 2 or 3: Continued

- As with Section 1, if the employer finds that Section 2 was never completed or is missing, the current version of the Form I-9 should be completed as soon as possible.
- **Do not backdate the form.** Instead, clearly state the actual date of hire in the certification portion of Section 2. The employer should also attach a signed and dated explanation of the corrective action taken.
- Even when correcting a Form I-9, an employer may not request specific documents when making corrections. You may specify that the document called into question cannot be used to correct the Form I-9.
- The employee should be permitted to present his or her choice of other documents, as long as they are acceptable for verification purposes.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

Technical Violations: Dos	Technical Violations: Don'ts
Do use different colored ink than the original ink	Don't use white out or correction tape
Do initial and date each correction with the current date	Don't use black marker to cross out incorrect information
Do make it clear that a correction is being made	Don't backdate missing dates or information
Do allow employees to make their own corrections on the form	Don't get rid of Form I-9 after revising it (keep in your records for at least 3 years)
Do draw a single line through an incorrect entry	Don't forget to double-check the form after it's corrected
Do make sure all of the information is clear and legible	Don't leave any information blank

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

Substantive Violations: Dos	Substantive Violations: Don'ts
Do fill out a new Form I-9 to correct errors	Don't try to reuse or correct the old Form I-9
Do attach the new form to the older Form I-9 and keep it in your records	Don't throw out the old version of Form I-9
Do fill out the new form with your employee present	Don't forget to fill in the new Form I-9 completely

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

You need a new Form I-9 if any one of the following scenarios occurs:

1. The current I-9 is invalid due to missing information or signatures
2. The current form is so chock-full of errors that it doesn't make sense
3. Your business was notified that you made a substantive violation
4. Form I-9 is missing
5. The form has been accidentally destroyed

- If there are many errors on a form or if an entire section has not been completed, fill out a new I-9 and attach it to the original.
- Under no circumstances are you to discard the original form. You should also notate the reason for the changes you made.
- Be sure to be up front with the changes you make, don't try to hide them, as that may raise suspicion.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

If an outdated version of Form I-9 was completed:

USCIS Guidance:

- *If an employer discovers that the wrong version of the I-9 was completed at the time of hire, but the documentation presented was acceptable under the rules in place at the time, the employer may:*
 - *Staple the outdated completed form to a blank copy of the current version; and*
 - *Sign the current blank version and note why the current blank version is attached (e.g. wrong edition was used at time of hire).*

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

If an employee’s employment authorization or employment authorization document has expired, or if an employee has changed names:

- Complete Section 3 on the current version of the I-9 form for re-verification.
- Keep the completed Section 3 with the original Form I-9.
- Keep in mind that U.S. citizens and noncitizen nationals (lawful permanent residents who presented a Form I-551 for Section 2), List B documents should not be re-verified, even if now expired. If the document was expired when completing the original Form I-9, correct Section 2 instead.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

If the employer finds that Section 1 was never completed or is missing:

- Attach to the existing Form I-9 a signed and dated statement identifying the error or omission and explain why corrections could not be made.
- If the employer finds that Section 1 was never completed or is missing, the current version of the Form I-9 should be completed as soon as possible. But the employer should not backdate the form.
- Instead, the employer should clearly state the actual date employment began in the certification portion of Section 2. The employer should also attach a signed and dated explanation of the corrective action taken.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

If the employer finds errors on an I-9 of already terminated employee:


- Once an employee is terminated from employment, employers are required to retain I-9s for three years after the employee's date of hire, or for one year following his or her date of termination, whichever date is later.
- Employers should use a process similar to the one outlined herein to correct any errors they find on I-9s retained for terminated employees.
 - Employers will be unable to correct any errors that require the former employee's input (e.g., missing documentation, missing signature).
 - All corrections and instances in which the employer was unable to make corrections should be noted on the Form I-9 audit log and on a memo attached to the I-9.

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CORRECTING FORM I-9 OMISSIONS, OR DISCREPANCIES

- **If an E-Verify error is found, the necessary action depends on when the employee was hired:**
- If the employee was hired while your organization was participating in E-Verify, create an E-Verify case for him or her immediately.
- If the employee was hired before your organization was enrolled E-Verify, do not create an E-Verify case for him or her.



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E Verify
 U.S. Citizenship and Immigration Services

Completing Form I-9

Revised Form I-9, Employment Eligibility Form

USCIS RESOURCES

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FORM I-9 RESOURCES

- I-9 Central
 - www.uscis.gov/i-9Central
- Spanish I-9 Central
 - www.uscis.gov/i-9Central/Espanol
- [Know your Rights](#)
- [Mergers & Acquisitions](#)
- Examples of documents:
 - [Acceptable Documents](#)
 - [Additional Documentation Requirements](#)
 - [Form I-9 Widget](#)

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DOWNLOAD USCIS FORMS & INSTRUCTIONS

<https://www.uscis.gov/i-9>

Forms and Document Downloads

- [Form I-9 \(Please see the Special Instructions tab for information on how to download and complete the form.\) \(PDF, 726.73 KB\)](#)
- [Form I-9 Paper Version \(This version is unfillable and must be printed for completion on paper only.\) \(PDF, 246.83 KB\)](#)
- [Form I-9 Supplement, Section 1 Preparer and/or Translator Certification \(PDF, 889.11 KB\)](#)
- [Instructions for Form I-9 \(PDF, 585.48 KB\)](#)
- [Form I-9 in Spanish \(May be filled out by employers and employees in Puerto Rico ONLY\) \(PDF, 492.41 KB\)](#)
- [Form I-9 Supplement in Spanish \(PDF, 247.41 KB\)](#)
- [Instructions for Form I-9 in Spanish \(PDF, 607.84 KB\)](#)

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DOWNLOAD USCIS HANDBOOK FOR EMPLOYERS

Home > I-9 Central > Handbook for Employers M-274

Handbook for Employers M-274

1.0 Why Employers Must Verify Employment Authorization and Identity of New Employees

2.0 Who Must Complete Form I-9

Handbook for Employers M-274

[Print Manual](#) [Table of Contents](#)

Guidance for Completing Form I-9 (Employment Eligibility Verification Form) | Current as of April 2020

[How to Download Our Manuals in PDF \(PDF\)](#)

<https://www.uscis.gov/i-9-central/handbook-for-employers-m-274>

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E-VERIFY OUTREACH

- [Free Customized Webinars](#)
- [Content for your newsletters](#)
- Add E-Verify to your job announcements
 - Example:
 - "Our company uses E-Verify to confirm the employment eligibility of all newly hired employees. To learn more about E-Verify, including your rights and responsibilities, please visit www.dhs.gov/E-Verify."



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USCIS CUSTOMER SERVICE

- **Employer Hotline: (888) 464-4218**
- **Employee Hotline: (888) 897-7781**
- **Form I-9 E-Mail: I-9Central@dhs.gov**
- **E-Verify E-Mail: E-Verify@dhs.gov**
- **Form I-9 Website: www.uscis.gov/I-9Central**
- **E-Verify Website: www.dhs.gov/E-Verify**


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QUESTIONS

- This is the chance to address issues that may not have been covered to your satisfaction; or
- To expand a point; or
- To clarify a point.
- If there are any further questions which we were not able to get to today, please feel free to contact me by email:

smeilleur@pomsassoc.com



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Disclaimer

Disclaimer:

This briefing has been prepared by Poms & Associates Insurance Brokers, LLC to provide information on recent developments of interest to our clients. It is not intended to offer legal or regulatory advice for a particular situation. Events are rapidly developing during this national state of emergency, and best practices are constantly changing.

During the current pandemic, we recommend that individuals and entities carefully monitor and follow health directives of the WHO and CDC, along with those of other federal, state, and local authorities.

Please visit our website at www.pomsassoc.com or call us at 818-449-9300.

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