

Legal Alert—Employment Verification Requirements IRS Form I-9

For every new employee, employers must complete Form I-9 to document the verification of the identity and employment authorization of that individual to work in the United States. The form must be used for US citizens and non-citizens alike. On the form, an employee must attest to his or her employment authorization by indicating how he/she has employment authorization and signing the form. The employee must also present his or her employer with acceptable documents evidencing identity and employment authorization. The employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and record the document information on the Form I-9. The list of acceptable documents can be found on the last page of the form.

Where to Find Form I-9

Employers can download Form I-9 at www.uscis.gov/i-9. The US Citizenship and Immigration Services provide a detailed handbook for employers that can also be found on this website. The handbook is titled M-274 and should be kept on file for assistance with completing Form I-9.

When to Complete Form I-9

Employers and the new employee must complete Form I-9 within three days of the employee joining the company. However, the employee must complete Section 1, identifying himself/herself no later than the first day of employment. The employee then has three days from the first date of employment to provide identity and employment documentation and complete Section 2 of the form. Employers can complete Form I-9 once the employee accepts the job offer; you do not have to wait for the first date of employment to complete the form.

Employers may not begin the I-9 process until a job is formally offered and the employee accepts the job offer. Form I-9 only applies to W-2 employees, not 1099 contractors. W-2 employees are individuals on payroll for whom the company pays Medicare and Social Security taxes. 1099 contractors are paid directly but the company does not pay Social Security and Medicare taxes for these workers. An accountant can help you determine how to classify particular employees.¹

Where and When to Store Form I-9

Employers must have a completed Form I-9 on file for each employee working in the United States and it must be completed within the first three business days of employment. Form I-9 must be retained and stored by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for

¹ The Internal Revenue Service provides guidance [on its website](#) for determining whether a worker is a 1099 contractor or W-2 employee.

inspection by authorized U.S. Government officials from the Department of Homeland Security, Department of Labor, or Department of Justice.

E-Verify

E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility. Unlike Form I-9, it is not mandatory to use E-Verify. Employers that choose to use E-Verify must use it for all employees.²

E-Verify helps employers authenticate work authorization documents. Enrollment in the program also allows employers to hire foreign national graduates of US colleges and universities in STEM (Science, Technology, Engineering, and Mathematics) fields for an additional 17 months without sponsorship for a work visa.

Consequences of Improper I-9 Practice

Failure to complete and retain Form I-9 can result in significant civil and criminal penalties. Recently, the Department of Homeland Security/Immigration and Customs Enforcement (DHS/ICE) have become more aggressive in their campaign to ensure that all U.S. employers comply with these provisions by conducting audits of employers' Form I-9 files. In the event of an audit, as an employer, you will have three (3) days to present your I-9s for inspection. The Form I-9s will be examined for missing and/or incorrect information and penalties will be assessed accordingly. The penalties could range anywhere from \$110 for each paperwork violation of an I-9 to \$16,000 for each unauthorized worker employed.

Employers should audit their own I-9 files once every 1-2 years, depending on the size of the organization. If you discover an error in Section 1 of an employee's Form I-9, you should ask your employee to correct the error.

The best way to correct the form is to:

- Draw a line through the incorrect information.
- Enter the correct information.
- Initial and date the correction.

To correct multiple, recording errors on the form, you may redo the section on a new Form I-9 and attach it to the old form. A new Form I-9 can be completed if major errors (such as entire sections being left blank or Section 2 being completed based on unacceptable documents) need to be corrected. A note should be included in the file regarding the reason you made changes to an existing Form I-9 or completed a new Form I-9.

² Employers can enroll in E-Verify [online](#). The USCIS provides a tutorial video and reference guide for E-Verify on its website.

Be sure not to conceal any changes made on the form (other than simple notation errors when copying document information). If you have made changes on a Form I-9 using white out, attach a signed and dated note to the corrected Forms I-9 explaining what happened.

If you do not have any I-9's on file, you should contact all current employees and have them all fill out Form I-9 in a timely manner. These new documents should not be backdated to the date of each employee's hire.

Special thanks to Matthew B. Meltzer, Meltzer Hellrung LLC, for providing this information.

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