



Fox Rothschild LLP
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I-9 Process Guide

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Introduction

Purpose: Immigration law requires employers to walk a fine line between determining the eligibility of employees to work in the United States (the purpose of the I-9 Form) and not discriminating against those of foreign origin or citizenship.

Which Employees Require I-9s: I-9 Forms must be completed for each employee hired on or after November 7, 1986. Those hired before this date and who have been continuously employed are “grandfathered” and no I-9 Form need be completed for them.

When I-9s Must Be Completed: Employers must have employees complete Section 1 of the form on their first day of work, and inspect documents and complete the rest of the form **within three days**. For employees hired for less than three business days, employers must complete the I 9 Form before the end of the employee’s first working day. Employers must suspend or discharge any employee who fails to submit proper documentation within the appropriate time. It is advisable to alert new employees of their need to provide work authorization documentation or send them the form prior to their first day of work to avoid any delay in obtaining such documentation.

If Employers Don’t Complete or Correctly Complete I-9 Forms: The failure to prepare an I-9 Form for a covered employee is considered equivalent to knowingly hiring an unauthorized alien. ***Employers who have knowingly hired unauthorized aliens, or knowingly continue to employ such aliens, may become subject to heavy fines.*** Employers who attempt to complete I-9 Forms but do so improperly may become liable for a lesser “paperwork violation,” but are also subject to heavy fines. Mitigating/aggravating factors that may affect actual liability include: the size of the company, the company’s good faith (or lack thereof) concerning compliance, the seriousness of the offense, whether the offense involves the knowing hire of unauthorized aliens and the company’s past compliance history.



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Procedures

Take note that the current edition of the I-9 Form is available in two formats: a fillable PDF form for completing on a computer and a printed version for completing by hand. The fillable PDF form is not an “electronic I-9” since it does not support electronic signatures. The form may be completed on a computer before being printed and signed, but the procedures must still follow the guidelines outlined here. Where we have indicated that information is not required in the Form I-9, but the fillable PDF form requires the entry of data into those fields, enter “n/a.”

Section 1: Employee Information and Attestation

Employee Responsibility:

Employees must complete Section 1 of the I 9 Form, including name, address, date of birth and citizenship status no later than the close of business on the first day of employment. The provision of a Social Security number is voluntary, unless the employer participates in E-Verify. Similarly, the provision of an email address and telephone number are voluntary. Employees must clearly mark **one** of the work-authorization statuses in the attestation section and fill out the requested information. If employees check the box indicating that they are a lawful permanent resident, they must also enter their Alien Registration Number/ USCIS Number in the space provided. If employees check the box indicating that they are temporarily authorized to work (“alien authorized to work until”), they must also enter the expiration date of their work authorization in the space provided AND enter an Alien Registration Number/USCIS Number or a Form I-94 Admission Number or Foreign Passport Number and its country of issuance in the spaces provided. Employees must sign and date the form, acknowledging that their statements are truthful, under penalty of perjury. If completing the fillable PDF form, employees should click on the “click to finish” button once complete to generate the barcoded printable form to be signed and dated.

Employees who are unable to complete Section 1 of the I 9 Form due to physical or mental disability, or inability to read or write in English, may be assisted. In such case, the preparer or translator may read the I 9 Form to the individual/assist him/her in completing Section 1. This individual must sign and complete the Preparer and/or Translator Certification section with their information. If more than one preparer/translator is used (i.e., one for translating and one for preparing the form), then use the Form I-9 Supplement, Section 1 Preparer and/or Translator Certification.

If no preparer and/or translator is used, ensure that the box indicating “I did not use a preparer or translator” is checked.

Employer Responsibility:

Employers must complete the form, including the review and entry of the employee’s document information, no later than the close of business three business days from the employee’s first date of employment. Employers must provide a complete I-9 Form to each employee – including all pages of instructions and list of acceptable documents. (The instructions and list of

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acceptable documents need not be reproduced for each employee; the same printed set may be presented to employees at the time of execution.) If using the fillable PDF version of the form, employers will also need to provide a computer/equipment for employees to complete Section 1 of the form. Although Section 1 is filled out by the employee (or by a preparer and/or translator for the employee), it is the **employer's responsibility** to ensure that it is properly completed. Employers must examine Section 1 of the Form I 9 to ensure that it is legible, that each entry is completed and that the form is properly signed and dated.

Tips:

- Be sure to use the most current version of the Form I-9 (with its instructions and document list) – “11/14/2016 N” in the lower left hand corner. [When this form was released, it replaced all earlier editions as of January 22, 2017.]
- Employers should review this section when handed back by the employee to ensure employee properly completed and signed required items.
- Employers may not require employees to fill in their Social Security number in this section (unless the employer participates in E-Verify).
- Employers may not require employees to fill in their email address or telephone number (these are voluntary).
- Employers may not request to see the documents with these numbers on them simply because the employee filled in their information in this section.

Section 2: Employer Review and Verification

Employee Responsibility:

Employees must present VALID original documentation to demonstrate both their identity and authorization to work in the United States. Such documentation may consist of EITHER: 1) any document from List A (which demonstrates both identity and authorization to work); **OR** 2) a combination of ONE document from List B (identity) **and** ONE document from List C (work authorization). All documents presented during this process must be unexpired. If employees do not have the required documents immediately available, they may produce them **within three business days from the date they were hired.**

If a document has been lost, *stolen or mutilated* beyond recognition, employees may apply for a replacement document. Receipt for the application of such document must be presented within three business days of hire, and the document itself must be presented within 90 days of hire. (This does not apply to aliens who indicate at the time of hire that they do not have work authorization or that their work authorization is expired and being renewed.)

Employer Responsibility:

Once Section 1 is completed by employees, employers should request that the employee present his/her **original** documentation in order to complete Section 2 of the I-9 Form. Employers may not demand that an employee produce a specific

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document or provide more than is minimally required. Employers must examine the original documents to ensure that they are listed on the current List of Acceptable Documents, that they ***reasonably appear on their face to be genuine*** and that they ***relate to the employee***. Employers should reject documents that are not original documents, that do not appear to be genuine, that appear to have been tampered with or that do not appear to relate to the individual presenting them. Employers should also pay attention to the type of documentation provided in relation to the citizenship status the employee has selected to ensure consistency. If there is a discrepancy, clarify with the employee if the incorrect citizenship status was selected or determine if there is a problem with the documents presented. See below for correcting errors if a mistake was made in Section 1.

Upon review of the original documents, employers must complete Section 2 by clearly and accurately recording ALL the required information from the documents, including any expiration dates that appear on the documents, under the proper column for the document(s) presented. If using the fillable PDF version of the form, certain information will auto-populate upon selection of the appropriate document from the pull down menu. Employers must first fill in the employee's name and citizenship status at the top of page two in order for the document menus to become available. Please note that the choice of citizenship status will automatically limit the document choice options, however, it is still possible to choose an incompatible document; as such, the form does not replace the employer's obligation to be cognizant of the consistency between the document(s) presented and the citizenship status selected.

Employers may make a photocopy of ***only*** those documents presented by employees to fulfill their I-9 requirements (no other documents) and attach those copies to the Form I-9. (There is no requirement to make copies, however, if such copies are made, they must be made for all employees and must be retained with the I-9 Form.) The copying and retention of documents does not relieve employers from the obligation to enter the required information from the documents on the form. Original documents are to be returned to employees.



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Employers must complete the certification section by inserting the employee's first date of employment (not the date the I-9 has been completed, if different), entering his/her own full name (no abbreviations) and title, the company's full legal name and complete address. Employers must sign and date the form in this section, acknowledging, under penalty of perjury, that s/he has reviewed the original documents presented to confirm that they relate to the employee and that the employee appears to be authorized to work. If completing the fillable PDF form, employees should click on the "click to finish" button once complete to generate the barcoded printable form to be signed and dated. Section 2 should be completed, signed and dated within three business days of the employee's first date of employment.

Tips:

- Confirm documents are genuine/not tampered with.
- Confirm documents actually relate to the individual presenting it.
- More is **not** better! Only accept the correct number and combination of documents (do not accept too many).
- If an employee provides you with too many documents, return the documents, refer the employee to the instructions and request that the employee choose which document/combination of documents to present to you.
- Only copy those documents acceptable for the I-9 process; keep those documents with the I-9.
- If you make photocopies, make sure the copies are legible.
- Do not skip sections (copying documents does not replace filling in the information).
- Don't forget to insert the first date of employment.
- It is permissible to write, type or stamp the company's name and address as well as the representative's name and title in advance (on photocopied forms).

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Section 3: Reverification and Rehires

Employees who present documents that establish a temporary right to work must be reverified *on or before* the expiration date of the document that controls work authorization. Only certain items require reverification:

1. List A, Item 3, a foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine readable immigrant visa.
2. List A, Item 4, Employment Authorization Document that contains a photograph (Form I-766).
3. List A, Item 5, for a nonimmigrant alien authorized to work for a specific employer because of his or her status: foreign passport and Form I-94 or Form I-94A in the same name and containing an endorsement of the alien's nonimmigrant visa status which has not yet expired and bears no conflict with the proposed employment.
4. List C, Item 8, Employment Authorization Document issued by DHS.

Employee Responsibility:

Employees should pay attention to and track the validity of their work authorizing documents, ensuring that they apply for renewals/extensions with sufficient time to enable continued employment. Employees must present new or updated documents verifying their continued authorization for employment *no later than* the date the previous authorization expires (see exceptions below). Employees may present any document/combination of documents from the Lists of Acceptable Documents and are not limited to showing the expired document with an extension or renewal.

Employer Responsibility:

Employers must track the expiration dates of work authorizing documents to ensure reverification is completed prior to their expiration. It is recommended that employers notify employees of the upcoming expiration up to six months in advance in order to avoid a break in employment or termination. Employers may not continue to employ employees beyond the date a temporary work authorization document expires without updating/reverifying their I-9 (see exceptions below).

Upon review of the original document(s), the employer must complete Section 3 by clearly and accurately recording ALL the required information from the documents, including any expiration dates that appear on the documents.

Employers may make a photocopy of **only those** documents presented and attach those copies to the Form I-9. (Employers should follow a singular policy regarding the photocopying of documents.) The copying and retention of documents does not relieve employers from the requirement to fully complete this section. Original documents are to be returned to employees.

Employers must complete the Reverification and Rehires section by entering his/her own full name (no abbreviations) and signing and dating the I 9 Form, acknowledging, under penalty of perjury, that the employee appears to be

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authorized to work and that s/he has reviewed the original documents presented to confirm that they relate to the employee. Section 3 should be completed, signed and dated on or before the date of expiration of the previous work authorizing document.

Section 3 may also be used to record a change in employees' names (as in a marriage) or for employees who are rehired before the I-9 retention period expires (so long as the documents originally presented remain valid at the time of rehire). Alternatively, the rehire process may be completed by executing a new Form I-9.

NOTE: When completing the reverification process or name change for an employee hired prior to January 22, 2017 (i.e., an older version of the I-9 Form was used), employers **must** use the new version of the Form I-9 (November 14, 2016), using the List of Acceptable documents from these forms, when completing the verification process.

Exceptions: Foreign nationals who are on employment-based sponsored visas who have an extension to that visa filed prior to the current expiration receive an automatic extension of work authorization and status while the application is pending with USCIS for a period of up to 240 days from the date of expiration. Similarly, **certain** foreign nationals who timely file EAD renewal applications may receive automatic extensions of their expiring EAD for up to 180 days from the date of expiration. This applies only to EADs with one of these eligibility category codes: A03, A05, A07, A08, A10, C08, C09, C10, C16, C20, C22, C24, C31 and A12 or C19. Employees must provide a copy of their Form I-797C, Notice of Action confirming the filing of the renewal application prior to expiration with a matching category code. Note: Some category codes on the EAD may include the letter 'P' such as C09P. Employers should disregard the letter 'P' when comparing the category code on the EAD with the category code on the receipt notice. As a separate issue, TPS beneficiaries may receive an automatic extension of their EAD on an alternate basis. See the applicable Federal Register Notice.

Tips:

- Permanent Resident Cards (also called Alien Registration Receipt Cards or "green cards") do not need to be reverified, even though they may bear an expiration date.
- Use a calendaring system for tracking expiration dates.
- Reverifying documents prior to their expiration is an **employer's responsibility**; employers may not insulate themselves from penalties by relying on employees to track and reverify independently.
- An application to renew an Employment Authorization Card does not, in and of itself, confer employment authorization. Employees must present new documents verifying their continued eligibility to work.
- Identity documents (List B) do not have to be reverified.
- Use newest version of Form I-9 whenever completing Section 3 for a current employee.

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Retention and Storage Requirements

Employers must maintain their own I-9 records for possible inspection by the federal government. This means employers must be prepared to produce I-9 records for all current employees (except those hired before November 6, 1986) as well as for terminated employees who fall within the “retention period,” which is: three years from the date of hire or one year from the date of termination, whichever is later. I-9 records may be stored at the worksite to which they relate or at a company headquarters (or other) location, but the storage choice must make it possible for the documents to be transmitted to a central location quickly. Official notices for the production of documents for inspection are only legally required to provide 72 hours’ notice.

Note: As a practical matter, it may not be advisable for private employer’s to store I-9 records in employees’ personnel files because it may be difficult to extract records from individual personnel files in time to meet a three-day deadline for official inspection (particularly if a large number of employees are involved).

Accordingly, systemized storage is critical to complying with retention requirements, monitoring reverification dates and being prepared for a government audit. Employers should maintain three separate sets of files for:

1. Former employees
2. Current employees (hired after November 6, 1986) with a work authorizing document which will expire; and
3. Current employees (hired after November 6, 1986) without work authorizing documents which will expire.

With respect to former employees, because the I-9 Forms must be retained for three years from the date of hire or one year from the date of termination, whichever is longer, employers should annotate the I-9 Form in pencil with the employee’s termination date, calculate the retention period, annotate the I-9 Form in pencil with the retention end date and organize these I-9 Forms by this date. When the retention requirement has been fulfilled, I-9 Forms may be discarded.

General Overall Tips

- “White-out” should **never** be used on a Form I-9.
- Corrections are permitted; however, obliterating previous incorrect information is not permitted.
- Corrections should be made conspicuously so as to avoid allegations of evidence tampering.
- Corrections should **ONLY** be made by lining out incorrect entries and inserting the correct information, annotating the initials of the individual making the correction and the date made.
- Corrections should be made only using information available in the file.
- Only the employee may make corrections to Section 1.
- Do not backdate or recreate any document.
- If an I-9 is missing or unable to be corrected, complete a new form.

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Social Security Mismatches

Although there are currently no immigration regulations in effect outlining the procedures an employer should follow where there is no match between an individual's name and Social Security number, previously promulgated regulations provide some guidance to employers on the procedures they should follow where an SSA report notifies the employer that their records do not show a match between the Social Security number and name. These procedures are described below. Similarly, if Social Security notifies an employer that the Social Security number provided does not exist in their database, the employer has an obligation under its tax and reporting compliance requirements to ensure that it obtains the correct information from the employee.

1. Employer should check records to ensure no mistake in name or number.
2. Employer should notify the employee of the mismatch and provide a reasonable amount of time for the employee to correct the error with SSA and report back.
3. Employer should follow up with employee to ensure SSA records are corrected then verify with SSA that the record is now correct.
4. If the employee fails to correct the record (or the record does not match when rechecked), the employer should then have the employee complete a new Form I-9 to confirm employment eligibility. When completing the form under this process, the employee should present a document which contains a photo and may not use the suspect Social Security number/card.

For more information, please contact:

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Attorney Advertising



Form I-9 Supplement, Section 1 Preparer and/or Translator Certification

Department of Homeland Security
U.S. Citizenship and Immigration Services

**USCIS
Form I-9
Supplement**
OMB No. 1615-0047
Expires 08/31/2019

Employee Name:	Last Name (<i>Family Name</i>)	First Name (<i>Given Name</i>)	Middle Initial
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Instructions: This supplement may be used if extra spaces are required to document more than one preparer and/or translator assisting an employee in completing Section 1 of Form I-9. The preparer and/or translator must enter the employee's name in the spaces provided. Each preparer or translator must complete, sign and date a separate certification area. Employers must retain completed supplement sheets with the employee's completed Form I-9.

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 (<i>mm/dd/yyyy</i>)	
Last Name (<i>Family Name</i>)		First Name (<i>Given Name</i>)	
Address (<i>Street Number and Name</i>)	City or Town	State	ZIP Code

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.

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