

INTERNAL I-9 AUDIT FOR HUMAN RESOURCES

By Capitol Immigration Law Group



Issues to be Covered in Today's Webinar

- I-9 Primer and Recent Changes
- Possible Outcomes of Self I-9 Audit
- The Most Common Mistakes in Completing Form I-9 and Corrections
- Developing an Effective I-9 Compliance Program In-house

I-9 Primer – Who, What, When?

- **All employers must complete and retain Forms I-9** for every person they hire for employment on or after Nov. 6, 1986, in the U.S. as long as the person works for pay or other type of compensation.
- **Storage.** Form I-9 MUST be on file for all current employees. Store Forms I-9 securely in a way that meets your business needs – on site, off-site, or electronically.
- **Retention.** Forms I-9 must be stored for 3 years after the date you hire an employee OR 1 year after the date you or the employee terminates employment, whichever is later.

Revised I-9 – What Has Changed?

Employment Eligibility Verification
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/12

*** START HERE. Read instructions carefully before completing this form. The instructions must be available during completion of this form.**
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which documents they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employers 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 (if any)

Address (Street Name and Number) Apt. Number City or Town State Zip Code

Date of Birth (month/day/year) U.S. Social Security Number (if any) Email Address 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):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number)
- An alien authorized to work until expiration date (if applicable, month/day/year). Some aliens may write "NA" in this field (see instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-484 Admission Number:

1. Alien Registration Number/USCIS Number _____

OR

2. Form I-484 Admission Number _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "NA" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employer Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

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

Signature of Preparer or Translator Date (month/day/year)

Last Name (Family Name) First Name (Given Name)

Address (Street Name and Number) City or Town State Zip Code

Employer Completes Next Page

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OMB No. 1615-0047; Expires 08/31/12
Form I-9, Employment Eligibility Verification

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

Read instructions carefully before completing this form. The instructions must be available during completion of this form.
ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last First Middle Initial Maiden Name

Address (Street Name and Number) Apt. # Date of Birth (month/day/year)

City State Zip Code Social Security #

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):

- A citizen of the United States
- A noncitizen national of the United States (see instructions)
- A lawful permanent resident (Alien #)
- An alien authorized to work (Alien # or Admission #) until (expiration date, if applicable - month/day/year)

Employee's Signature Date (month/day/year)

Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form, and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature Print Name

Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title:		Document title:		Document title:
Issuing authority:		Issuing authority:		Issuing authority:
Document #:		Document #:		Document #:
Expiration Date (if any):		Expiration Date (if any):		Expiration Date (if any):
Document #:		Document #:		Document #:
Expiration Date (if any):		Expiration Date (if any):		Expiration Date (if any):

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agency may omit the date the employee began employment.)

Signature of Employer or Authorized Representative Print Name Title

Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable) B. Date of Rehire (month/day/year) (if applicable)

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title Document # Expiration Date (if any):

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) have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative Date (month/day/year)

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Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representatives must complete and sign Section 2 before the expiration date of the employee's that day of employment. The most physically sensitive one document from List A OR examine a combination of one document from List B and one document from List C as listed on the Table of Acceptable Documents on the reverse of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

List A	OR	List B	AND	List C
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date (if any)(month/day/year)		Expiration Date (if any)(month/day/year)		Expiration Date (if any)(month/day/year)
Document Title		Document Title		Document Title
Issuing Authority		Issuing Authority		Issuing Authority
Document Number		Document Number		Document Number
Expiration Date (if any)(month/day/year)		Expiration Date (if any)(month/day/year)		Expiration Date (if any)(month/day/year)

Certification

I attest, under penalty of perjury, that I (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 (month/day/year): _____ (See instructions for exceptions.)

Signature of Employer or Authorized Representative Date (month/day/year) Title of Employer or Authorized Representative

Last Name (Family Name) First Name (Given Name) Employee's Business or Organization Name

Employee's Business or Organization Address (Street Name and Number) City or Town State Zip Code

Section 3. Reverification and Rehire (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 B. Date of Rehire (if applicable) (month/day/year)

C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any)(month/day/year)

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) have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative Date (month/day/year) Print Name of Employer or Authorized Representative

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ICE Sends Strong Message to Employers

- Criminal prosecution of egregious violators
- More than \$87.9 million in financial sanctions
- 726 companies debarred
- Investigations in numbers:
 - 2007 – 250
 - 2008 – 503
 - 2009 – 1,444, Fines \$1 million
 - 2010 - 2,000
 - 2011 - 2,496
 - 2012 – 3,000, Fines \$13 million

Why to Conduct Internal Self I-9 Audit?

- Sense check to limit liability, once a year
- Merger or acquisition
- A non-immigration related investigation by federal or state agencies, such as IRS
- Mandatory or voluntary E-Verify implementation
- Voluntary audit in preparation for turning I-9 Forms over to ICE for a mandatory audit

Before You Start - Possible Outcomes of Self I-9 Audit:

- I-9 Forms Contain Errors and HR Will Have to Request Assistance and/or Documents from Employees to Make Corrections
- Fraudulent I-9 Documents Are Identified During the I-9 Audit
- Undocumented Employees Are Identified During the I-9 Audit
- Individuals File Complaints with the DOJ Office of Special Counsel

STEP I – Gather Documents for I-9 Audit

- Gather list of all current and terminated employees
- Organize completed I-9 forms. Separate the I-9s for current employees and former employees by I-9 version
- Company manual/guide
- Chart of acceptable documents, for each version of I-9 form

STEP II - Assess Whether There Are any Systematic Problems with the I-9s

- Analyze whether there are any root causes (e.g., need for: training on how to complete an I-9, completing I-9s on the first day of work, tracking expiration dates of work authorization documents, storing I-9s for proper length of time, etc.)
- Discuss outcome of the audit and analysis with management

STEP III - Address and Resolve Problems Uncovered

- Develop Action Plans
- Follow up on Action Plan progress
- Discuss Action Plan progress with company management
- *If the audit reveals that disciplinary action should be taken against any individuals hired by the company, discuss the situation with your management or your legal counsel before taking action*

Be Sensitive to Employee Morale and Concerns in Your Company

- Stay in tune with the employee concerns and morale within your company.
- If appropriate, communicate to your employees your company's philosophy:
 - The Company is fully committed to its nondiscrimination policy – including its policy that it will not tolerate discrimination on the basis of a person's national origin;
 - The Company remains committed to diversity – it will continue to hire, train and promote a diverse workforce;
 - The law requires the Company to have every employee complete a Form I-9 to demonstrate that he/she is eligible to work in the United States – the Company is committed to and must follow the law.

Form I-9, Section 1 – Employee Completes



Employment Eligibility Verification

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

USCIS
Form I-9

OMB No. 1615-0047
Expires 03/31/2016

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ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire 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 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		E-mail Address		Telephone Number	

Section I – Employee Completes

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):

- A citizen of the United States
- A noncitizen national of the United States *(See instructions)*
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. *(See instructions)*

For aliens authorized to work, provide your Alien Registration Number/USCIS Number **OR** Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

If you received your Form I-94 when traveling to the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. *(See instructions)*

**3-D Barcode
Do Not Write in This Space**

Signature of Employee:

Date (mm/dd/yyyy):

Section 1 – Most Common Mistakes

Issue

- Employee's name not printed on the Form I-9
- No check mark indicating whether employee attests to being a United States Citizen, Lawful Permanent Resident or alien authorized to work
- No A number next to the phrase, "A Lawful Permanent Resident" where A number is not in sections 2 or 3 of the Form I-9 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection)
- No Alien or Admission number next to the phrase, "An alien authorized to work until" where Alien or Admission number is not provided in sections 2 or 3 of the Form I-9 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection)
- No employee signature
- Failure to ensure that the individual dates Section 1 of the Form I-9 at the time employment begins

Required Action

- Have employee make correction
- Have employee make correction
- Have employee make correction
- Have employee make correction
- Have employee sign document
- Have employee sign document and in margin indicate the current date of signature

Form I-9, Section 2 – Employer Completes

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 examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1:

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:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				

**3-D Barcode
Do Not Write in This Space**

Section 2 – Most Common Mistakes

Issue

- Improper List A, B or C documents reviewed or verified
- No document title; identification number; or expiration date of a List A, B or C document and a legible copy of document(s) is not retained with the Form I-9 and presented at the I-9 inspection
- Failure to provide the date employment begins in the attestation
- Failure to sign the attestation in Section 2
- Failure on the part of the employer or authorized representative to print their name in the attestation portion of Section 2
- Failure to date Section 2 of the Form I-9
- Failure to date Section 2 of the Form I-9 within three business days of hire or if the employee is hired for three business days or less, at the time employment begins
- Failure to recertify and complete within 90 days the pertinent Section 2 information for verification with a receipt for lost or stolen documents

Required Action

- Employer representative should ask employee to present acceptable document for new review
- Employer representative should complete missing information
- Employer representative should complete missing information
- Employer representative should complete missing information and indicate current date
- Employer representative should complete missing information
- Employer representative should complete missing information and indicate current date
- No correction possible. Note to avoid future violations.
- No correction possible. Note to avoid future violations.

Over Documentation Equals Discrimination

Issue

- Over Documentation (inspecting more than one document from List A OR one document from List B and List C)

Required Action

- No correction possible. Note to avoid future violations.

Correcting I-9 Forms

- All corrections should be initialed and dated as of the date of the correction. Never backdate. Never use "white out".
- Corrections to Section 1 can only be made by the employee if he/she is still employed.
- Corrections to Section 2 can only be made by the company representative who reviewed the employee's original documents at the time of hire or by a different company representative who now re-inspects the employee's original documents if he/she is still employed. Changes cannot be made based upon a review of photocopies of employee documents, if any.

What if Audit Reveals Missing Forms I-9

- Contact each employee that he/she will need to complete an I-9 before allowing them to work again.
- Provide the employees with information on documents they can use to complete the I-9 Form.
- Inform the management that the employee cannot work until an I-9 is completed, if applicable.
- Employee and manager complete an I-9 using the current I-9 form.
- Remember: ***Never back date the forms.*** Keep documentation of action taken to correct the situation.
- **NOTE: *If an employee reveals that they cannot produce valid documents to complete the I-9, or that they are not eligible to work in the United States, the employee must be terminated – discuss with your management or legal counsel before you take action.***

FREQUENTLY ASKED QUESTIONS ABOUT CORRECTING AN I-9

- During the internal audit, if I find I-9's that have lots and lots of mistakes, should I just throw out the original I-9 and start over?
- **NO -Never throw out an original I-9.** If you think it's best to "start fresh" due to the number of errors or messiness of an original I-9, make sure to staple the original and new I-9 together. Even with mistakes, the original I-9 is important evidence of a good faith attempt to fill out the I-9 at an earlier time.

FREQUENTLY ASKED QUESTIONS

- **Should I make copies of the I-9 documentation?**
- You may choose to make copies of employee documentation presented to you for Section 2. If you choose to photocopy documents, you **must do so for ALL employees**, regardless of actual or perceived national origin, immigration or citizenship status, or you may be in violation of anti-discrimination laws.

What To Do In the Event of a Government I-9 Audit?

- Verify the identity of the agent – request some official form of identification with a photo.
- Do not deny the agent entry into company.
- Be as cooperative as possible at all times.
- If the agent wants to see I-9 documents as part of a routine audit, request some time to comply with the request (you are allowed 72 hours to present them).
- If ICE asks to see or take I-9 documents, you should make copies of these documents before providing them with the originals.
- **Do not take any corrective action** with respect to your current I-9 Forms until after consulting competent counsel as this could be considered interference with the investigation.
- Contact immigration counsel.

Best Practices in Developing Effective I-9 Compliance Program

- Centralization of Authority
- Centralization of Storage
- Written hiring and employment eligibility verification policy that addresses completion of the I-9 form
- Training program related to the hiring and employment verification process, including completion of the I-9
- Keeping a reliable reminder system before employment eligibility expires
- Periodic Internal Audits

Effective I-9 Compliance Program

- If followed consistently for each and every employee, the compliance program will
 - ❖ Cut down on the possibility of immigration-related liability and show good faith
 - ❖ Save the steep fines, brand damage and penalties—including criminal prosecution—that accompany noncompliance.
 - ❖ Reduce employee complaints on immigration-related discrimination
 - ❖ Eliminate confusion and distrust among co-workers and management

**This webinar does not constitute legal advice.
This presentation provides basic information
to help you become generally familiar with
I-9 audit procedures.**

**Questions? Contact us at:
info@cilawgroup.com**

