

I-9 Audit Guide and Worksheet

Summary of Employer Responsibilities

Under federal law, all employees hired in the United States are required to establish and certify their identity and right to work in the country. Individuals employed in the United States are required to complete Section 1 of the Form I-9 no later than their first day of employment. This may be completed before the first day of employment so long as an offer of employment has been made. Then, individuals are required to produce, within three business days of the date employment begins, proof of their identity and eligibility to work in the United States to their employer for completion of Section 2.

The employer must also comply with all applicable laws regarding the use of E-Verify, the United States Citizenship and Immigration Services (USCIS) free, internet-based system that compares information from an employee's Form I-9 to data from the U.S. Department of Homeland Security and Social Security Administration record to confirm employment eligibility. The federal government mandates the use of E-Verify for certain federal contractors and subcontractors and for all federal government agencies. Specifically, employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause must use the system for current employees performing direct and substantial work under those contracts and all new hires. Employers must also be enrolled in E-Verify in order to remotely examine Form I-9 documentation (i.e., participate in the alternative procedure to in-person document inspection). In addition, there are further state, local, and municipal regulations related to E-Verify covering both private employers and government contractors.

Form I-9 Records Retention

Employers are required to have a Form I-9, *Employment Eligibility Verification*, on file for each employee hired after November 6, 1986, for the full duration of their employment.

Once an individual's employment has ended, employers must maintain their Form I-9 for three years after the employee's date of hire, or one year after their termination of employment, whichever is later.

Form I-9 Storage

USCIS recommends that employers keep employees' Form I-9 records separate from other personnel records to facilitate inspection requests. Many employers elect to store Form I-9s in a separate main file or three-ring binder. Because I-9 files are subject to unique record retention laws, a separate main file or three-ring binder will help ensure that the employer retains the Forms I-9 for as long as necessary and can readily discard them after the retention period expires.

No matter how an employer chooses to store Forms I-9, they must be able to present them to government officials for inspection within three days of the date the forms were requested.

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Copies of Employment Authorization Documentation

Employers are not required to make copies of employee documents for completion of the I-9 process. However, an employer may have a policy or practice to do so. If an employer chooses to make copies of documents an employee presents, it must do so for all employees, regardless of national origin, citizenship status, or any other protected class. Photocopies of documents provided for the I-9 should be stapled to the I-9 and not used for any other purpose. Additionally, making copies of documents provided for the I-9 does not negate an employer's responsibilities to fully and accurately complete Section 2, the employer's section.

Note that employers that participate in the E-Verify program must retain copies of certain documents. If an employee presents a document used as part of photo matching, currently the U.S. passport and passport card, Permanent Resident Card (Form I-551), and the Employment Authorization Document (Form I-766), you must retain a photocopy of the document presented and continue to retain a photocopy of these documents if presented by new hires. Only copies of these documents are required for the E-Verify program.

Correcting Records

Errors found on I-9 records should be corrected promptly. The following tips may help an employer correct or adjust these records. It is important to remember to never back-date the signatures on the Form I-9; the current date should always be entered and initialed for changes.

I-9 Section 1: Employee Errors

If an employee made a minor mistake in filling out Section 1 of the Form I-9, request that they correct the issue. The employee should draw a line through the incorrect information, enter the correct information, and initial and date the correction. An employer may not correct an error made by the employee in Section 1. The employer should attach a written explanation of what happened, and the correction made to the Form I-9.

I-9 Section 2: Employer Errors

If an employer discovers that an employee failed to provide adequate documentation to complete Section 2 of the Form I-9, the employer should promptly request the appropriate documents from the List of Acceptable Documents. Once provided, enter the missing documents into Section 2 of the Form I-9. The employer should attach a written explanation of what happened, and the correction made to the Form I-9.

If the employee's employment has ended, the employer should attach a written explanation about the incorrect or omitted information to the employee's Form I-9.

An employer may only correct errors to Section 2 or the "Reverification and Rehires" section (Supplement B) of the Form I-9. To correct an employer mistake, line through the portion(s) of the form that contain incorrect information, then enter the correct information. Initial and date the correction. It is recommended that an employer attach a written explanation to the corrected Form I-9 explaining what happened. Be sure to sign and date the note in addition to the log (see final page of this guide).

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Significant errors or omissions by the employee or employer may require that a new Form I-9 be completed. Attach a note to the corrected Form I-9 explaining what happened. Retain the original Form I-9 attached to the new Form if a new Form is completed.

To correct multiple recording errors on the form, an employer may re-complete the section(s) 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 the employer made changes to an existing Form I-9 or completed a new Form I-9. This should be attached to the original Form I-9.

Wrong Version of the I-9 on File

If an employer discovers an outdated, expired Form I-9 was completed after the publication of a new version, but the I-9 documentation presented was acceptable under the I-9 rules that were current at the time of hire, an employer should rectify the error. Employers have two options to do so:

1. The best way would be for the employer and employee to complete the current version of Form I-9 and staple the previously completed Form I-9 to the current version. Include an explanation of what happened and sign and date the explanation.
2. If the employer is unable to have the employee and employer complete the current version of Form I-9, the employer should either:
 - a. Staple the outdated, but complete Form I-9, to the current version. The form I-9 should be signed and include a signed and dated explanation for the update; or
 - b. Draft an explanation of the situation. Sign and date the explanation, and attach it to the completed, outdated Form I-9.

Missing I-9

If an employer discovers a missing Form I-9, the employer and the employee must promptly complete a new Form I-9. The employee must complete Section 1 of the Form I-9, and their signature should not be back-dated. The employer must complete Section 2 of Form I-9 and enter the applicable documents into the appropriate list(s). As for the dates in Section 2, the following applies:

- For the date the employee began employment in the Certification block of Section 2: enter the employee's *original* start date with the company.
- For the date in the employer's signature block, enter the date the employer reviewed the employee's documents, thus completing the Form I-9. Do not back-date this date.

U.S. Citizenship and Immigration Services requires that a Form I-9 is completed as soon as possible when it is determined one isn't on file and requires that an employee does not back-date the form. The employer should attach a written explanation about the newly completed Form I-9 to the employee's Form I-9.

