

I-9 Compliance for HR Professionals

What is an I-9?

The I-9 is a form that employers must complete to verify that a potential employee is authorized to accept employment in the United States. Congress implemented this verification program in the Immigration Reform and Control Act (IRCA) of 1986, to combat the unlawful employment of persons who were not authorized to work in the United States. The main point of the program was to establish a penalty for employers who engaged in a “pattern or practice” of hiring persons without authorization to work in the United States.

What You Need to Know: The Bottom Line.

The bottom line is that employers may employ or continue to employ workers who are authorized to accept employment in the United States. Persons authorized to accept employment include citizens, lawful permanent residents, and some nonimmigrants. To ensure authorization, employers must verify the identity and citizenship or immigration status of every employee hired after November 6, 1986. The Form I-9 is the instrument by which an employer must verify a workers’ status. All Form I-9s must be retained for three years after employment begins or one year after termination, whichever is longer. This requirement is important to follow, as with just three days notice, Immigration and Customs Enforcement (ICE) can demand inspection. In the event that ICE discovers violations of the I-9 requirements, employers have the right to a hearing before an Administrative Law Judge. Penalties of \$100 to \$10,000 apply when it is determined that the employer engaged in a “pattern or practice” of hiring workers who are not authorized to accept employment in the United States.

Who is a Legal Worker: How can I tell?

All employees hired after November 6, 1986 are required to have a Form I-9 (Employment Eligibility Verification Form) on file with the employer. The employee must present documents establishing their identity and authorization to accept employment in the United States. Acceptable documents are listed on the Form I-9 and include a State issued driver’s license, Social Security card, Passport, CIS Employment Authorization Document, Nonimmigrant Visa, I-94 card, Lawful Permanent Resident card, etc. The employer must examine each document presented and record information concerning the documents, including document identification numbers and expiration dates. Most employers maintain a copy of the documents it examines.

The employee must complete section 1 of the Form I-9 before or at the time employment begins. The employer must complete section 2 before employment begins or within three business days of the date the employee begins working. The employer and the employee must both sign the form.

Establishing standard identification and documentation procedures for the time of hiring are recommended. Further, employers should also establish procedures to re-check documents with expiration dates, such as nonimmigrant visas, I-94 cards and CIS Employment Authorization Documents.

An employer may not require an employee to produce a particular document, such as a permanent

resident document (green card). *Requiring a particular document is a prohibited practice.* Further, employers may not discriminate against employees based upon citizenship, lawful permanent resident status, or national origin.

When do I not complete Form I-9?

There are some instances when completing an I-9 is not necessary. When hiring the particular workers, neither the employer nor the employee will need to complete the form:

- Employees hired on or before November 6, 1986, the effective date of the IRCA of 1986.
- Self-employed people.
- Domestic employees providing services in a private home on a sporadic, irregular, or incidental basis. Once-a-week employment, however, requires completion of an I-9 as such employment is not irregular.
- Independent contractors.

Certain changes in employment do not require completion of a Form I-9:

- Temporary leave with or without pay.
- Workers returning to work after a temporary layoff.
- Workers returning to work after a strike or labor dispute.
- Transfers from one place of employment to another, within the same company.
- Continued employment with a related or reorganized successor employer.

Avoiding Common Errors.

Earlier I mentioned that a company should establish procedures for completing the Form I-9 for each new employee. The following recommendations serve as a guideline for completing the form and for establishing these procedures:

- Do not omit document expiration dates.
- Make sure that the new employee completes every item in Section 1 (Employee Information and Verification) and signs and dates the form in the box provided. The employee must also check one of the three boxes to show status in the United States.
- When an employee provides a driver's license, be sure to specify the State in the United States from which the driver's license was issued.
- The company representative who examined the original documents must sign Section 2 (Employer Review and Verification), and print or type their name. No person who has not personally examined the documents should sign the form.
- Do not omit the name and address of the company in the employer's certification box.

For more information

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