

## I-9 Forms

Compliance Made Easy: How to Complete an I-9 Form/Audit.

This is fairly basic training and is not intended to provide you with legal guidance regarding I-9 forms. The regulations are very detailed and can be confusing. We have broken things down into clear and manageable guidance to explain the major requirements of I-9 administration.

However, if you have any questions beyond what we cover here, you should be sure to thoroughly read the detailed instructions in the Handbook for Employers issued by the US Customs and Immigration Service.

Or if you are served with a formal audit notice, we always recommend that you consult with an immigration attorney.

Objectives:

1. Why?

To comply with I-9 regulations and record keeping.

2. What?

The deadlines you must follow.

3. How?

The basic steps of properly completing an I-9 Form/Audit.

In 1986, Congress passed the Immigration Reform & Control Act. This legislation requires that all US employers must verify the employment authorization of all workers.

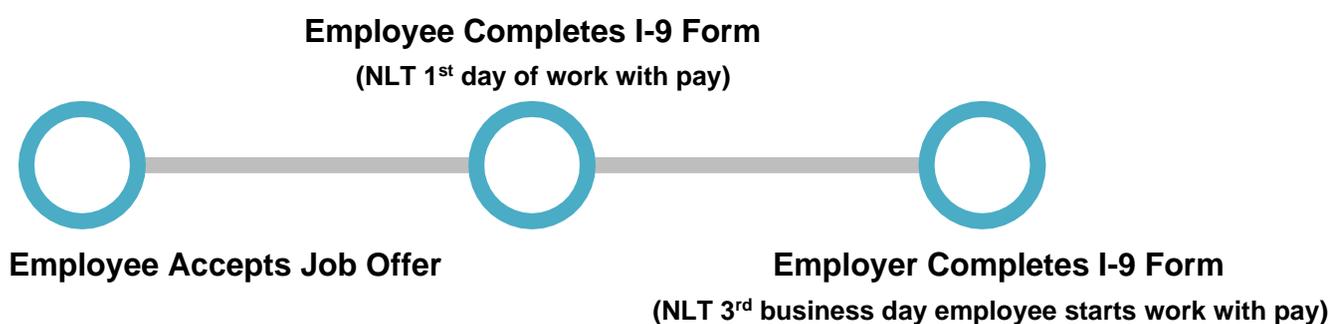
This Act mandates:

- How you must verify work authorization, what forms and what documents to accept
- What Deadlines to meet to ensure you are complying
- The various financial and operational Penalties for non-compliance
- And the Criminal charges you can face if you are found to be out of compliance

**Did you know...** that the fines for improper I-9 documentation can range from \$110 per error/per form, all the way up to tens of thousands per error for repeat and grave offenses. And often, one form can have multiple errors on it.

And as if that's not enough, many government agencies have signed a Memorandum of Understanding –which is an agreement to share Cross agency communications and findings that often lead to additional governmental scrutiny.

### 1.) Critical Timelines in Completing I-9 Form



## 2.) Critical Timelines in I-9 Form Management

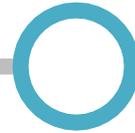
Complete all I-9s



Audit all I-9s



Correct Errors on I-9s



Phase 1: Complete all I-9s. First, you **MUST** complete the I-9 form when you hire someone, and we'll walk you through how to do that correctly.

Phase 2: Audit all I-9s. Schedule and conduct periodic self-audits of your I-9 forms.

**Whirks Best Practice** is to do this once a year, at the very minimum.

Phase 3: Correct Errors on I-9s. Make corrections to your I-9s in the proper way. This will show a good faith effort to ensure compliance and goes a long way to minimizing and possibly even eliminating your risk of penalties and fines.

### Phase 1: Complete all I-9s

#### Section 1: Employee Information and Attestation -Completed by Employee

This section is focused on how to complete the I-9 form correctly. For more information about auditing and correcting I-9 forms, the next section is called "How to Audit & Correct Your I-9 Forms and that's where we'll cover phase 2 & 3.

Here's the top portion of the current I-9 form ---the one that doesn't expire until October 31, 2022.

1. When you hire someone, **ALWAYS** hand them the entire I-9 Form--including **all** the instructions **which includes a page listing of all acceptable documents an employee can provide from List A, B and C.**
2. Allow the employee to choose which documents to provide. **Remember, ONLY accept documents from List A OR one from List B and one from List C.**
3. **Physically inspect every document carefully.** Make sure all documents are **NOT** expired.
4. Have the employee fill out their name, any other names they've used (notice it doesn't say maiden name---just any other name), their current address, date of birth, email address if they have one, and telephone number. The SSN is optional, unless you use e-Verify. In that case, you must have them provide the SSN because you'll need it to set up their info in e-Verify.
5. Then, make sure the employee selects one of the boxes and if appropriate, that they provide a document number in the correct box or boxes. Remember, if they don't mark one of the boxes, this can become a major violation.
6. Make sure the new hire signs and dates the bottom of Section 1.

## Section 2: Employer or Authorized Representative Review & Verification - Completed by Employer Representative

Here is Section 2 of the current I-9 form. This is the section that you, the employer, must complete. As you can see, the Employer **or** the Authorized Representative must fill in the employee's name from Section 1 –exactly as they have it.

The Employer representative signing the I-9 must also view the employee documents –one document from list A **or one document from list B AND one from list C.**

Here are some guidelines:

1. Physically examine each original document.
2. New employee must be physically present while you are examining the documents.
3. Make sure that the documents reasonably seem to relate to the employee. For example, hair color can change, eye color can change due to contacts. But height is probably fairly constant by working age---so if the document shows the employee should be 5'3" but the person standing in front of you is 6' tall, you might want to question that. If the document was issued when the employee was under 18, I suppose it's possible they shot up in height. But if the document was issued when the employee was 40, and they were 5'3" and now they're 6' tall.
4. Make sure the document is NOT expired.
5. Fill in the first day of employment---this needs to match what will be in your payroll system.
6. And if you make copies of any documents the employee provided, you must do it for all new employees and **keep** it with the I-9. Don't put it in the employee file.
7. **Then sign and date Section 2.**

## Section 3: Reverification & Rehires -Completed by Employer Representative

Section 3 is for reverification of expired documents and rehires.

- Employer enters the document title, number or expiration date for the acceptable documentation presented.
- Employer enters the date of rehire, if applicable.
- Employer enters the employee's new name, if applicable.
- Employer signs and dates the Certification.

**Here's an example of a violation---The Employer does not complete Section 3 until after the employee's work authorization has expired. This must be done BEFORE the document expires.**

**So Set up calendar reminders to track re-verifications and give 90 days' notice to the employee that their authorization is going to expire.**

Here's a **SPECIAL NOTE**: U.S. citizens and non-citizen nationals never need re-verification. **Do not** re-verify the following documents:

1. An expired U.S. passport or passport card,
2. Alien Registration Receipt Card/Permanent Resident Card (Form I-551),
3. a List B document that has expired

So, as long as the documents were not expired when the employee was first hired, you never have to re-verify these 3 documents.

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**Whirks Best Practice** is to do this once a year, at the very minimum.

Phase 3: Correct Errors on I-9s. Make corrections to your I-9s in the proper way. This will show a good faith effort to ensure compliance and goes a long way to minimizing and possibly even eliminating your risk of penalties and fines.

Objectives:

2 Parts to the Audit Process

Part 1: Addressing Missing I-9s

Part 2: Reviewing Existing I-9s

## Phase 2: Audit Process

### PART 1: IDENTIFYING MISSING I-9 FORMS

- Step 1:** Pull all I-9 forms out of employee files and put in an **Active I-9 binder** in alphabetical order by employee's last name.
- Step 2:** Generate a list of all active **and** terminated employees from your HRIS or Payroll system for last 3 years (LN, FN, Date of Birth, Date of Hire, Termination and Rehire)
- Step 3:** Highlight the employees that do not have an I-9 on file (I-9s are not needed for volunteers, independent contractors or consultants or anyone hired before November 6, 1986)
- Step 4:** Contact any active employees that don't have an I-9 and have them come see you.
- Step 5:** Explain that you need for them to complete an I-9 **now**, give them the entire form with the instructions **which includes Lists A, B and C of acceptable documents** and ask them to bring you the necessary documents so you can review them
- Step 6:** Make sure you let the employee choose the documents to provide and that they're not expired.
- Step 7:** Make sure employee **signs and dates Section 1** of I-9 Form
- Step 8:** Employer representative must **sign and date Section 2** of I-9 Form
- Step 9:** File completed I-9 form and supporting documentation along with a **memo** (What, Why and When) (*see sample memo in Bonus Section: I-9 Correction Memo*)
- Step 10:** No documentation?
  - < **90 days** of employment: Consult immigration attorney
  - > **90 days**: Terminate or Unpaid Leave of Absence
- Step 11:** List terminated employees without an I-9 Form

## PART 2: REVIEW EXISTING I-9 FORMS

- Step 1:** Download the Audit Log to document your findings as you review the existing I-9 Forms
- Step 2:** Section 1: Ensure name, other names used (If applicable), address, and date of birth are completed
- Step 3:** If you use e-verify, make sure the SSN is filled in as well
- Step 4:** Ensure employee has identified his/her immigration status and has signed and dated the I-9 Form
- Step 5:** Ensure the proper document has been entered into the proper list – List A or B and C
- Step 6:** Ensure that **all** the required information is entered on the I-9 Form for each document and that none are expired
- Step 7:** Ensure that the certification has been completed and a representative of the company has **signed and dated** the form
- Step 8:** Complete Section 3 of I-9 Form **only** if employee's work authorization **expired** or if the employee has been **rehired**
- Step 9:** Separate the I-9s into two piles
  - Pile 1:** I-9 Forms with **errors**
  - Pile 2:** I-9 Forms that are correct
- Step 10:** File all I-9s in Pile 2 in the Active Employee I-9 binder sorted in alphabetical order

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Phase 3: Correct Errors on I-9s. Make corrections to your I-9s in the proper way. This will show a good faith effort to ensure compliance and goes a long way to minimizing and possibly even eliminating your risk of penalties and fines.

Objectives:

4 Parts to the Correction Process

Part 1: Correcting Errors on Section 1

Part 2: Correcting Errors on Section 2 and/or 3

Part 3: Correcting Multiple Errors

Part 4: Reasons to Use A New I-9 Form

## Phase 3: CORRECTING ERRORS ON THE I-9 FORMS

### Correcting Errors in Section 1

- Step 1:** Tell the **Employee** there is an error and make sure the **Employee** is present to make the correction
- Step 2:** Have the **Employee** draw a line through the incorrect information
- Step 3:** Have the **Employee** enter the correct info
- Step 4:** Have the **Employee** initial and date the correction

### Correcting Errors in Section 2

- Step 1:** **Employer/Employer Rep:** Draw a line through the incorrect information
- Step 2:** **Employer/Employer Rep:** Enter the correct information
- Step 3:** **Employer/Employer Rep:** Initial and date the correction

### Correcting Multiple Errors on the I-9 Form

- Step 1:** This is very simple if there are only one or two minor changes to be made. However, if there are multiple corrections to be made, you may need to use a new I-9 form. For example, if an entire section was mistakenly left blank or if Section 2 was completed based on unacceptable documents, you cannot change the original I-9. In either of these situations, you would need to use a NEW, CURRENT VERSION of the I-9 to list the acceptable documents
- Step 2:** If you need to use a new I-9, you may redo the section with the error in it on a new form and attach it to the old form
- Step 3:** Include a note in the file regarding the change you made, the reason you made it and whether you made the change on the existing I-9 or used a new I-9 form
- Step 4:** Make a note on your audit log of the error and of the correction and how and when it was made

### Reasons to Use A New I-9 Form

- Step 1:** There are so many errors that the original I-9 would be too messy, and no one could read it
- Step 2:** Entire sections of the original I-9 were left blank
- Step 3:** Incorrect documents were used in Section 2 to verify work authorization

**Red Flags:**

- Always check to verify that you are using the current I-9 form. It's a costly error to use an outdated version of the form. I know many employers print several copies to keep on hand, but if you use the wrong one...it's a problem.
- Pay attention to the NO MATCH letters that are sent out from the Social Security Office. They are sent to employers when there is a discrepancy in the SSN being used by an employee and come with detailed instructions on what to do to resolve the issues. Unresolved No Match letters become a juicy morsel for ICE to sink their teeth into!
- Be ever vigilant about Identify Theft and the ease with which unscrupulous people falsify their documents, steal innocent employee's information, etc. Pay close attention to the documents that are provided by new hires and keep all your employee data secure from prying eyes.
- And while you need to be screening work authorization documents carefully, make sure you don't fall prey to "over documentation" by asking for too many documents or documents from the wrong lists. Doing this can lead to discrimination claims by dissatisfied employees.
- And, just as importantly, be careful that you don't "under document" and let someone get away with failing to provide the right documents for your records.

**Tips:**

1. Train your hiring managers or any staff that are responsible for completing the I-9 form as the Employer Representative.
2. Audit your own records so you can make corrections before you're caught with your pants down by ICE.
3. Identify a good Immigration Attorney in your state or city so that if the nice man from ICE comes a knockin' at your door, you have someone you can trust to call on immediately.