

The 2020 Spin on the Form I-9

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Agenda

- I-9 Basics
- The New Form and Handbook
- Form I-9 and Covid19
- Penalties and How to Avoid Them

Immigration Reform and Control Act of 1986

Illegal to...

- *knowingly* hire, or continue to employ, an unauthorized worker
- discriminate based on citizenship, immigration status, or national origin (actual or perceived)
- document abuse
- retaliation or intimidation

Prohibited discriminatory practices may be committed by someone not involved in actual Form I-9 completion

Immigration Reform and Control Act of 1986

Employer must:

- Hire only authorized workers;
- Comply with the "Employment Verification System" (timely complete the Form I-9);
- Retain the Form I-9 for all active employees and certain former employees; and
- Treat all workers equally regardless of citizenship, immigration status, or national origin.

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The Form I-9 – A Brief History

Multiple Versions:

- | | |
|----------------------|-------------------|
| ➤ Rev. 10/21/2019 N | ➤ Rev. 03/26/07 N |
| ➤ Rev. 07/17/2017 N | ➤ Rev. 06/05/07 N |
| ➤ Rev. 11/14/2016 N* | ➤ Rev. 05/31/05 Y |
| ➤ Rev. 03/08/13 N | ➤ Rev. 11/21/91 N |
| ➤ Rev. 08/07/09 Y | ➤ Rev. 05/21/90 |
| ➤ Rev. 02/02/09 N | ➤ Rev. 05/07/87 |
| ➤ Rev. 06/16/08 N | ➤ Rev. 03/20/87 |

*An "N" means that a Form I-9 with earlier revision date can no longer be used; a "Y" means the Form is valid until the agency issued a new Form with a revision date containing an "N"

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The Form I-9

The Form I-9 is as much a "form" as a system – the process of completing and maintaining the form is as important as the information it contains

1. Employee attestation of status (Section 1)
2. Employee presentation of documents to prove identity and work authorization
3. Employer (or authorized representative) review of original documentation (Section 2)
4. Employer certification that documents appear valid and relate to the employee (Section 2)
5. Employer reverification of work authorization (as applicable)

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Timing

- Section 1 - no later than 1st day of employment for pay
- Section 2 - no later than 3rd day of employment (1st day if individual will work three or fewer days)
- Section 3 - before expiration date of individual's work authorization

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Timing

- Recommended to complete the entire form on the first day
- May be completed after the person accepts a job offer
- An applicant should never be asked to complete a Form I-9

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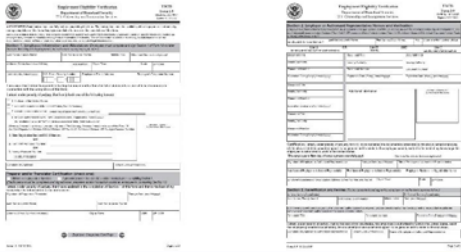
Authorized Representatives

You may delegate the authority to complete Form I-9 to a responsible agent, however, you will retain liability for any errors

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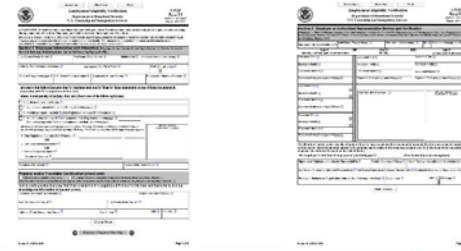
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New Form I-9 - Paper



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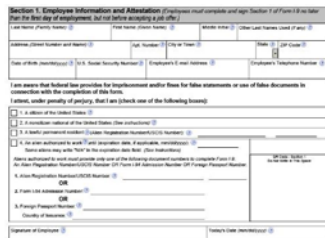
New Form I-9 - Online



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The New Form

- Section 1



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The New Form

- Preparer/Translator

Preparer and Translator Certification (check one)

I am not a preparer or translator. I, the preparer and/or translator, assisted the employee in completing Section 1. (Fields below must be completed and signed when preparer and/or translator assist an employee in completing Section 1.)

I am, 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	Taxpayer Date (month/year)
Last Name (Family Name)	First Name (Given Name)
Address (Street Number and Name)	City or Town
	State ZIP Code



The New Form

- Section 2

Section 2. Employer or Authorized Representative Name and Verification

I am the Employer or Authorized Representative. I am completing this section on behalf of the employer or authorized representative of the employee.

I am not the Employer or Authorized Representative. I am completing this section on behalf of the employer or authorized representative of the employee.

Employer or Authorized Representative Name	Address	City or Town	State	ZIP Code
Signature of Employer or Authorized Representative	Taxpayer Date (month/year)			

Employer or Authorized Representative Name: _____
Address: _____
City or Town: _____
State: _____
ZIP Code: _____

Signature of Employer or Authorized Representative: _____
Taxpayer Date (month/year): _____



The New Form

- Section 3

Section 3. Verification and Return (To be completed and signed by employer or authorized representative)

A. Tax Name (if applicable)

Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (month/year)
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B. Date of Return (if applicable)

C. If the employer's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

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

I affirm, 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 documentation, the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: _____ Taxpayer Date (month/year): _____
Name of Employer or Authorized Representative: _____



List of Acceptable Documents

- CURRENT VERSION = 10/21/2019N

- Must make the Lists of Acceptable Documents available to employees to complete the Form

- The EMPLOYEE MUST provide:

- One document from List A
- OR
- One document from List B
- AND one document from List C



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The New Form

- Revision date is October 21, 2020, and expires on October 21, 2022
- Required for all new hires and reverifications after May 1, 2020
- Spanish version is still valid for use only in Puerto Rico but may be used for reference for individuals to determine how to complete the English version
- An updated M-274, Handbook for Employers, has been available on the USCIS website since April

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Highlights of the New Form

None

Highlights of the New Form

- Clarifications in Instructions:
 - Who may act as an authorized representative
 - No requirement to write N/A in List B and List C columns when complete List A
 - Removal of Employment Authorization Documents from List C
 - Addition of Form FS-240, Consular Report of Birth Abroad, to List C

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“Highlights” of the New Form

- Clarifications in the New Handbook
 - More information on authorized representatives
 - List B documentation clarifications
 - How to determine when documents issued to F-1 and J-1 nonimmigrants expire
 - Guidance on calculating retention dates
 - Auto-extensions for certain documents
 - Cap-Gap extension document requirements

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Related Development for EADs

Temporary policy change to allow acceptance of approval notices (Form I-797, Notice of Action) for delayed EADs from 12/1/2019 to 08/20/2020

MUST reverify EAD no later than December 1, 2020

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Remote Hires

- DHS continues to refuse to allow review or examination of documentation by any form of remote service (Skype, ZOOM, FaceTime, etc.)
- Only options remain: bring employee to employer's physical worksite or use an authorized representative

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Pandemic Concessions

- Employers with FULLY remote employment can use a remote service (Skype, ZOOM, FaceTime, etc.) or fax, email, or webcam to view documentation
- Effective March 20, 2020 for 60 days and extended multiple times (currently to November 18, 2020)
- When resume normal operations, all such employees must present documentation in-person to HR and the employer must update the Form completed during the remote work period

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Pandemic Concessions

FULLY remote employment means fully remote

- if any employees are physically present at a work location, in-person verification is required
- DHS will look at situations where new employees are in quarantine or a lock-down on a "case-by-case" basis

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Pandemic Concessions

- Authorized Representatives:
 - An HR person from a company near the remote hire or an attorney or notary in such area
 - On-site manager, supervisor, or co-worker
 - Family member
- Key = understand rules as employer is liable for any actions or errors

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Penalties

- Civil – monetary from \$200 to \$22000+
 - Hiring Practices
 - Form Completion
 - Document Abuse
 - Document Fraud
 - E-Verify Nonconfirmations
- Criminal – monetary to jail time

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Section 1 Best Practices

- Employer must ensure that one of the boxes is checked
- Permanent resident must include Alien Registration ("A") or USCIS number
- "Alien Authorized to Work" must list a status expiration date if they have one
- If the "Alien Authorized to Work" box is checked, more information must be provided – three options

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Section 1 Best Practices

Employees must complete and date and sign Section 1, BUT employers are held liable for any blank boxes and errors – critical for employers to review Section 1 and compare the information on the Form with the information in the supporting documentation.

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Preparer/Translator Best Practices

- Employee must indicate yes/no
- Must complete if anyone assists* the employee with Section 1
 - Employee who has a disability, who has a language barrier, who needs the instructions or responses translated, etc.
 - AND where information is automatically pre-populated from an onboarding or HR program
- Even if a preparer/translator completes it, the employee must sign Section 1.

*Guidance in Handbook on completion of Section 1 for minors who cannot produce a List B identity document.

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Section 2 Best Practices

- Employer must complete Section 2
- “3-day rule” for completion = if employment begins on Monday, must complete by Thursday
- Define “business days” for the specific employer
- Complete employee name and immigration status at top – easy to overlook this field.

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Section 2 Verification

The image shows a screenshot of a 'Section 2 Verification' form. The form is titled 'Section 2 Verification of Authenticity, Employment Status and Identification'. It contains several sections for data entry, including 'Employee Information', 'Employer Information', and 'Document Verification'. The 'Document Verification' section has columns for 'Document Type', 'Document Number', and 'Expiration Date'. There are also checkboxes for 'Document is Original' and 'Document is Copy'. The form is partially filled out with some text.

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Section 2 Best Practices

- View original, unexpired documents (physically touch the documents in the employee's presence)
- Do NOT ask for specific documents
- List A section allows for three documents (e.g., F and J visa employees)
- "Receipt Rule"
- Use the Additional Information box to explain
- To copy or not to copy documents

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Section 2 Best Practices

- State under penalty of perjury that examined the documents – the person who signs must be the person who examined them
- May use a stamp for employer name and address or type in and copy the form with this information
- Complete with "first day of employment" (when employment in exchange for wages or other remuneration begins)

Section 3 Best Practices

- Not required to update for name changes only
- Employee may provide a document from List A or List C as proof of current employment authorization.
- Reverifications must be on the most current version
- ALL List B documents and some List A documents (permanent resident and U.S. passports/cards) do not need reverification

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Section 3: When to Reverify

- Do NOT Reverify
 - U.S. Passport or Passport Card
 - Permanent Resident Card (Form I-551)
 - List B documents
- Permanent Resident Exceptions
 - ONLY if employee presents a Form I-94 with a temporary I-551 stamp or a foreign passport with a temporary I-551 stamp (a machine readable immigrant visa (MIRV))
- Reverify when employment authorization document (List A or C) has an expiration date

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List of Acceptable Documents Best Practices

- Social Security Cards with restrictive language about work authorization CANNOT be accepted as evidence of employment authorization
 - Provide the employee with the List, the Form, and the instructions with on-boarding packet
- Reminder: All documents MUST be unexpired

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Retention of Forms

- Must have a form for each active employee
- Keep separate from personnel and employee immigration files (if any) and limit access
- Keep separate binders for current and terminated employees
- Track expiration dates of employment documents
- Purge forms as soon as eligible

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Retention of Forms

Three years from date of hire
OR
One year from date of termination
WHICHEVER IS LATER

Add Purge Date to Form when placed in
"terminated" binder

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Retention of Forms

Example:

- Smith was hired on November 1, 2019, and terminated on July 5, 2020
- Date of Hire + 3 years = November 1, 2022
- Termination date + 1 year = July 5, 2021

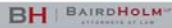
Retention date is November 1, 2022

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Self Audits

December 2015 ICE/OSC *Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits*



Correcting Form I-9

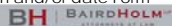
Correcting Mistakes

- Correct the existing form **OR** prepare a new form
- To correct the existing form, line out incorrect portions, enter correct information, initial and date correction with different color of ink
- To correct with a new form, complete the form and retain with original and attach a short memo stating reason for the correction



Common Errors

- Employee left "other names used" blank
- No SSN listed when employer uses E-Verify
- Employee did not check a status box
- No Alien Number when lawful permanent resident selected for status
- No date of expiration for work authorization
- Date of birth and/or date of Form completion incorrect
- Employee did not indicate yes/no in translator/preparer section
- Employer left top line of Section 2 blank or incomplete or lists information that contradicts Section 1
- No date of hire listed
- Document information in List A/B/C incomplete
- Employer representative or employee did not sign and/or date Form



Correcting Form I-9

Missing Forms

- Provide the employee with a Form I-9 to complete, allowing three business days to provide acceptable documents to HR
- DO NOT backdate the Form I-9
- Prepare short memo explaining discovery and correction

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Questions?

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