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Form I-9 Workshop

2022 Edition

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Agenda

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

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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 an 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”

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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Form I-9 - Paper

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Form I-9 - Online

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Form

- Section I

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Current Form

- Preparer/Translator

Preparer and/or Translator Certification (check one):

☐ I do not use a preparer or translator. ☐ I (preparer) and/or translator(s) assisted the taxpayer in completing Section 5. (Forms below must be completed and signed when preparer and/or translator assist an employee in completing Section 5.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 5 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator _____ Today's Date (mm/dd/yyyy) _____

Last Name (Plaint Name) _____ First Name (Given Name) _____

Address (Client Address and Name) _____ City or Town _____ State _____ ZIP Code _____

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Current Form

- Section 2

- [illegible]

Current Form

- Section 3

Section 3. Reverification and Rehires *(To be completed and signed by employer or authorized representative.)*

A. New hire (if applicable) ¹		B. Date of Rehire (if applicable)	
Last Name (Family Name) ²	First Name (Given Name) ³	Middle Initial ⁴	Date (mm/dd/yyyy) ⁵

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 ⁶	Document Number ⁷	Expiration Date (if any) (mm/dd/yyyy) ⁸
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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 documentation, the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative ⁹	Date (mm/dd/yyyy) ¹⁰	Name of Employer or Authorized Representative ¹¹
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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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Current 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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Notice Issued on Next Version

- Proposed changes:
 - Compressing Sections 1 and 2 back into one page
 - Changing Section 3 into a supplement with three separate parts
 - Updating the online List of Acceptable Documents to links to DHS issued List C documents and samples of receipts
 - Reducing the instructions to 7 pages
 - Accessibility from any electronic device

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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 October 31, 2022)
- When normal operations resume, 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

- As of April 1, 2021, the in-person inspection applies to those employees who physically report to work at a company location on any regular, consistent, or predictable basis.
- Only employees hired on or after April 1, 2021 who work exclusively in a remote setting due to COVID-19 related precautions are temporarily exempt from the physical inspection requirements and only until they begin reporting at a company location on a regular, consistent, or predictable basis or the flexibility concession ends, whichever is earlier.
- DHS will look at pre-April 2021 situations 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 \$23000+
 - Hiring Practices
 - Form Completion
 - Document Abuse
 - Document Fraud
 - E-Verify Nonconfirmations
- Criminal – monetary fine and/or jail time

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Section 1 Best Practices

- Employer must ensure that one of the status 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

Section 2: Employee or Authorized Representative Review and Verification
 Review and verify the documents listed below and sign the form. The employee or authorized representative must sign the form in the presence of the employer or authorized representative.

Document Type	Date	Signature
Document 1		
Document 2		
Document 3		

Additional Information: _____

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

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 (MRIV))
- 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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Expired List B Documents

During the pandemic, USCIS suspended the requirement that a List B document, such as a driver's license, must be unexpired to be acceptable as a Form I-9 supporting document.

This ended on May 1, 2022; and, if an employer accepted an expired List B document between May 1, 2020, and April 30, 2022, the employer is required to update these Form I-9s by July 31, 2022

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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, 2021, and terminated on July 5, 2022
- Date of Hire + 3 years = November 1, 2024
- Termination date + 1 year = July 5, 2023

Retention date is November 1, 2024

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Self Audits

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

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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

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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

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Common Errors

- 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

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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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Late Breaking(ish) News

- Automatic extension period for expiring EADs for certain renewal applicants increased from up to 180 days to 540 days
- Begins on expiration date stated on EAD
- Available to applicants with pending Forms I-765 as of 5/4/22, including those applicants whose employment authorization lapsed following the initial 180-day extension period
- Applies to renewal Form I-765s filed beginning on or after 5/4/22 and ending 10/26/23

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Questions?

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