



Addressing Workplace ICE Visits and Form I-9 Inspections and Compliance

February 3, 2025

Presented By :

Sara Zorich

Partner – Labor &
Employment

Agenda

- ICE Visits(warrant vs. subpoena/audit)
- ICE Form I-9 Audits – What to Expect, and How to Respond
- Proper Completion of the Form I-9 (Including Remote Hire Verification)
- E-Verify



Types of Immigration and Customs Enforcement (ICE) Visits



U.S. Government Agencies



Department of Homeland Security (DHS)

- U.S. Citizenship and Immigration Services (USCIS)
- Customs and Border Protection (CBP)
- Immigration and Customs Enforcement (ICE)
- Student and Exchange Visitor Information System (SEVIS)
- Homeland Security Investigations (HSI)

Department of Justice (DOJ)

- Immigrant and Employee Rights (IER)

Department of State (DOS)

- US Embassies and Consulates-issues visas
- Oversees J-1 visa category

Department of Labor (DOL)

- Labor Condition Application (LCA) for H-1B
- PERM Labor Certification – green card process

Is Your Company Ready for a Visit or Audit from a Governmental Agency?



- What to do when a governmental agency representative arrives.
- Who should speak with the governmental agency representative?
- When should you talk to counsel about the issue?

First Steps



- Visit from ICE or Customs and Border Protection (CBP) (or any other governmental agency):
 - Need to have a plan of who is going to speak with ICE and who at the Company needs to be notified immediately (Management, attorney, etc.).
 - Need to train employees on the plan so they know what to do/say. If they encounter ICE at the door:
 - Stay calm!
 - Politely state: “I am not authorized to provide any information. Please wait by the front door/lobby while I contact my supervisor.”

Determine Why ICE Is There



- Management authorized to speak on behalf of the Company should engage with ICE.
 - Again, be polite.
 - Ask for identification of the agents – write down the information or take a picture.
 - Ask for a copy of any documentation they have presented and why they are there so that this information may be immediately forwarded to Management and your attorney.
 - Tell the agents that you need to review the information with Senior Management.

Review the Documentation



- The documentation and purpose of the visit will determine the next steps:
 - *Judicial Warrants* – Signed by a United States District Court Judge or Magistrate Judge (or other judicial court if in other states).
 - *Administrative Warrant* – Issued by a federal agency and **not a US District Court**. At the top of the document, you will see the US Department of Homeland Security or other governmental agency – not a court.
 - *Subpoena* – Could be from a court or from a governmental agency – looking for documents.
 - *Notice of Inspection/Audit* – Form I-9 Audit (usually accompanied by a subpoena)

Judicial Warrant



- Review the scope of the warrant:
 - Address listed.
 - Individual(s) listed.
 - Areas or items listed on the search warrant.
- ICE has the right to search the areas listed for the individual listed.
- If the person is not on the premises – you can simply state “the individual is not on the premises”.
- DO NOT LIE – or give any false information.
- Do not run or block exits – ICE could say that there were likely violations of immigration laws (probable cause).
- You should cooperate with the scope of the warrant.
- Someone should be with ICE at all times during the inspection. Do not interfere with their duties but keep an eye on where they are visiting.

Administrative Warrant



- Does not permit the agent any legal authority to compel employees or management to produce documents.
- Does not permit the agent any legal authority to compel employees or management to assist with any efforts to locate or detain an individual.
- Does not permit the agent any legal authority to compel employees or management to access their facilities, other than the common area.
- Recommend you tell the agent that you are not going to allow them into any area outside of the common area without a judicial warrant.

Administrative Subpoena



- Should review what documents the subpoena is looking for.
- Should have time to review the subpoena and present the information/documents at a later date.

Information Provided



- You are not required to provide any “voluntary information”.
- ICE agents may be “friendly”... but they are not your friends.
- What you or your employees say could be used against the Company.
- Do not identify anyone’s work authorization status.
- Do not sign anything until you have discussed with counsel.

Employees



- If you have done your Form I-9 due diligence, you have established the employees working for you are authorized to work in the US in compliance with applicable law.
- DO NOT provide any documentation or communication to the employees that the Company has any understanding or believes they are not authorized to work in the US.
- If an employee tells you they are not authorized to work in the US, you have constructive knowledge of such and cannot continue to employ them.
- Note, employees have the right to remain silent and speak with a lawyer if they are arrested or questions via a judicial warrant .

ICE Form I-9 Audits: What to Expect and How to Respond



ICE Process



- Agents will present an administrative subpoena and notice of inspection (normally 2 agents) looking for your Form I-9's and any supporting documentation.
- You will have time to turn them over – you DO NOT need to turn them over while the agents are there.
- ICE/Homeland Security Investigations (HSI) will review your Form I-9's for technical (correctable) and substantive (finable) errors.

ICE Process (Cont'd)



- Notify you of technical errors and give you an opportunity to respond.
- Notify you of any employee with “suspect documents” – you need to notify the employee that they are on the list and that they have ten (10) days to bring you new documents (that will be reviewed by ICE), or they must be terminated.
- Notify you of any substantive errors and the fine.
- Negotiate the fine (or the case will be turned over to litigation before the Office of the Chief Administrative Hearing Officer (OCAHO) and an administrative law judge will uphold or change the fine (costs money to litigate...))

DHS Audit – I-9 Fines



- If the Department of Homeland Security (DHS) determines you have knowingly hired unauthorized aliens, it may order you to cease and desist and may implement a civil fine from a first offense range of \$698 - \$27,894 per employee.
- Failing to comply with the I-9 – failing to complete, retain or make available during an inspection – can also result in fines between \$281 - \$2,789 for each violation (note the Enhancement Matrix which can significantly increase fines).

Enhancement Matrix			
Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Aliens	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%

DHS Audit – Substantive I-9 Fines



Some Common Mistakes that are Finable...

- Failing to present a Form I-9 for inspection (missing form).
- Employee's failure to put his/her name in Section 1.
- Employee's failure to check the appropriate box identifying his/her citizenship or immigration status in Section 1.
 - Failure to put his/her A number for Permanent Resident or Alien Number (only if no document or not provided in Section 2).
- Employee's failure to sign the attestation in Section 1.
- An employer's failure to record a proper List A, B or C document in Section 2 (unless a copy of the document is retained).
- An employer's failure to sign the Attestation in Section 2.
- Failure to complete Section 2 within three (3) business days.
- An employer's failure to re-verify employee whose authorization expires and complete Section 3.

IER/DOJ Investigations



- **Employers Beware**

- Federal law prohibits: 1) citizenship status discrimination in hiring, firing, or recruitment or referral for a fee, 2) national origin discrimination in hiring, firing, or recruitment or referral for a fee, 3) unfair documentary practices during the employment eligibility verification process (generally, Form I-9 and E-Verify), and 4) retaliation or intimidation.
- The Department of Justice is active and will investigate complaints of unfair documentary practices during the employment eligibility verification process.
- E-Verify employers provide a lot of electronic data to USCIS during the E-Verify process which can be shared with the Department of Justice (DOJ).

Action Plan Prior to DHS Visits



- Prior to a visit from DHS/ICE/HSI:
 - Perform an internal I-9 audit.
 - Determine any non-compliance and fix technical errors.
 - Should any substantive changes need to be made, provide a uniform action plan for all employees.
 - Perform the audit in a nondiscriminatory manner.

Form I-9 Completion



Current Form I-9



- Issued on August 1, 2023, with an edition date of 8/1/2023. You can find the edition date at the bottom of the page on the form and instructions. (<https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf>)
- You can use the prior version (10/21/2019 with expiration date of 10/31/2022) for new hires until 10/31/2023.
- Starting Nov. 1, 2023, employers who fail to use the 08/01/2023 edition of Form I-9 for **NEW HIRES AND REVERIFICATION** may be subject to all applicable penalties under section 274A of the INA, 8 U.S.C. 1324a, as enforced by U.S. Immigration and Customs Enforcement (ICE).



Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9

OMB No. 1615-0047

Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number (if any)	City or Town		State
ZIP Code			Date of Birth (mm/dd/yyyy)		U.S. Social Security Number	
Employee's Email Address			Employee's Telephone Number			
I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.			Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):			
			<input type="checkbox"/> 1. A citizen of the United States			
			<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions.)			
			<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)			
<input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any)						
If you check Item Number 4., enter one of these:						
USCIS A-Number		OR	Form I-94 Admission Number		OR	Foreign Passport Number and Country of Issuance
Signature of Employee			Today's Date (mm/dd/yyyy)			

If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the [Preparer and/or Translator Certification](#) on Page 3.

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign **Section 2** within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see instructions.

List A	OR	List B	AND	List C
Document Title 1				
Issuing Authority				
Document Number (if any)				
Expiration Date (if any)				
Document Title 2 (if any)		Additional Information		
Issuing Authority				
Document Number (if any)				
Expiration Date (if any)				
Document Title 3 (if any)				
Issuing Authority				
Document Number (if any)				
Expiration Date (if any)				
<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.				
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.				First Day of Employment (mm/dd/yyyy):
Last Name, First Name and Title of Employer or Authorized Representative		Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)
Employer's Business or Organization Name		Employer's Business or Organization Address, City or Town, State, ZIP Code		

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

LISTS OF ACCEPTABLE DOCUMENTS

All documents containing an expiration date must be unexpired.

* Documents extended by the issuing authority are considered unexpired.

Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.

Examples of many of these documents appear in the Handbook for Employers (M-274).

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
5. For an individual temporarily authorized to work for a specific employer because of his or her status or parole: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the individual's status or parole as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security For examples, see Section 7 and Section 13 of the M-274 on uscis.gov/i-9-central . The Form I-766, Employment Authorization Document, is a List A, Item Number 4 , document, not a List C document.
		8. Native American tribal document		
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI				
Acceptable Receipts May be presented in lieu of a document listed above for a temporary period. For receipt validity dates, see the M-274.				
• Receipt for a replacement of a lost, stolen, or damaged List A document. • Form I-94 issued to a lawful permanent resident that contains an I-551 stamp and a photograph of the individual. • Form I-94 with "RE" notation or refugee stamp issued to a refugee.	OR	Receipt for a replacement of a lost, stolen, or damaged List B document.		Receipt for a replacement of a lost, stolen, or damaged List C document.

*Refer to the Employment Authorization Extensions page on [I-9 Central](#) for more information.

Form I-9 Instructions



- Form I-9 instructions:
(<https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf>).
- All employers must:
 - Make the instructions for Form I-9 and List of Acceptable Documents available to the employee when completing the Form I-9 and when requesting that the employee present documentation to complete Supplement B, Reverification and Rehire.
 - Ensure that the employee completes Section 1.
 - Complete Section 2 within three (3) business days after the employee's first day of employment. If you hire an individual for less than three (3) business days, complete Section 2 no later than the first day of employment.
 - Complete Supplement B, Reverification and Rehire when applicable.
 - **Leave a field blank if it does not apply and allow employees to leave fields blank in Section 1, where appropriate.**

Form I-9



- Who Needs a Form I-9 ?
 - Must complete a Form I-9 for all new hires.
 - Applies to employees hired after November 6, 1986.
 - Spanish version of the form/instructions can be provided or referenced, but employee **MUST** complete the English version of the form.

Form I-9 Completion



- **You may have your employees complete Form I-9:**
 - On their first day of employment (the actual commencement of employment of an employee for wages or other remuneration referred to as date of hire in the Department of Homeland Security regulations); or
 - Before their first day of hire, if you have offered the individual a job and if they have accepted the offer.
 - Employees can have help completing Section 1, including using a translator.

Monday	First Day of Work For Pay Employee completes Section 1
Tuesday	
Wednesday	
Thursday	Form I-9 Due Employer completes Section 2

Completing an I-9 Properly



SECTION 1 – Employee Information

- Ensure that the employee fully completes Section 1 by the first day of work.
 - Cannot be completed until AFTER the employee accepts employment.
 - **CANNOT be pre-populated by the Employer!**
- If Employer assists with completing, then must complete the preparer/translator supplement (Supplement A).
- Must make the List of Acceptable documents available to the employee.

Section 1 – Employee's Information and Attestation (Employee Completes)



Employment Eligibility Verification Department of Homeland Security U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)	
Address (Street Number and Name)		Apt. Number (if any)	City or Town		State ZIP Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address		Employee's Telephone Number	
I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.		Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):				
		<input type="checkbox"/> 1. A citizen of the United States				
		<input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)				
		<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)				
		<input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any)				
		If you check Item Number 4., enter one of these:				
		USCIS A-Number	OR	Form I-94 Admission Number	OR	Foreign Passport Number and Country of Issuance
Signature of Employee				Today's Date (mm/dd/yyyy)		
If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the Preparer and/or Translator Certification on Page 3.						

Section 1 – Employee's Information and Attestation (Employee Completes)



- **Step 1:** Employee completes Section 1 no later than the first day of employment.
 - All employees must provide their current legal name, complete address, and date of birth. If other fields **do not apply, leave them blank.**
 - When completing the name fields, employees enter their current legal name and any last names previously used, including any hyphens or punctuation. If they only have one name, enter it in the Last Name field and then enter “Unknown” in the First Name field.
 - Providing their 9-digit Social Security number in the Social Security number field **is voluntary**, unless the employer participates in E-Verify. Employees DO NOT enter an Individual Taxpayer Identification Number (ITIN) as their Social Security number.

Section 1 – Employee's Information and Attestation (Employee Completes)



- **Step 2:** Employee attests to citizenship or immigration status.
 1. A citizen of the United States.
 2. A noncitizen national of the United States: An individual born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.
 3. A lawful permanent resident. *(See next slide for more information)*
 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work: An individual who has authorization to work but is not a U.S. citizen, noncitizen national, or lawful permanent resident. *(See next slide for more information)*

Section 1 – Employee's Information and Attestation (Employee Completes)



- **Step 2:** Employee attests to citizenship or immigration status (CONT'D).
- Lawful Permanent Resident – An individual who is not a U.S. citizen and who resides in the United States under legally recognized and lawfully recorded permanent residence as an immigrant. Conditional residents should select this status. Asylees and refugees should NOT select this status; they should instead select “A noncitizen authorized to work.” If employee selects “lawful permanent resident,” **MUST enter their 7- to 9-digit USCIS Number (A-Number) in the space provided.**
- A noncitizen national of the United States : Employees selecting this category **MUST enter the date their employment authorization expires**, if any, in the space provided. In most cases, their employment authorization expiration date is found on the documentation evidencing their employment authorization. If their employment authorization documentation has been automatically extended by the issuing authority, then they enter the expiration date of the automatic extension in this space. Refugees, asylees, and certain citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau, and other noncitizens authorized to work whose employment authorization does not have an expiration date, should enter N/A in the Expiration Date field. Employees who select “a noncitizen authorized to work” **must enter one of the following** to complete Section 1:
 - (1) USCIS Number/A-Number (7 to 9 digits);
 - (2) Form I-94 Admission Number (11 digits); or
 - (3) Foreign Passport Number and the Country of Issuance

Section 1 – Employee's Information and Attestation (Employee Completes)



- **Step 3:** Employee signs and dates Section 1.
- **Step 4:** If a preparer and/or translator assists an employee in completing Section 1, that person must complete a Certification area on Supplement A, Preparer and/or Translator Certification for Section 1, located on Page 3 of Form I-9. There is no limit to the number of preparers and/or translators an employee may use. Each preparer and/or translator must complete and sign a separate Certification area.

Supplement A – Preparer/Translator



Supplement A, Preparer and/or Translator Certification for Section 1

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
Supplement A
OMB No. 1615-0047
Expires 07/31/2026

Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle Initial (if any) from Section 1.
---	---	---

Instructions: This supplement must be completed by any preparer and/or translator who assists an employee in completing Section 1 of Form I-9. The preparer and/or translator must enter the employee's name in the spaces provided above. Each preparer or translator must complete, sign, and date a separate certification area. Employers must retain completed supplement sheets with the employee's completed Form I-9.

I attest, 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		Date (mm/dd/yyyy)	
Last Name (Family Name)	First Name (Given Name)	Middle Initial (if any)	
Address (Street Number and Name)	City or Town	State	ZIP Code

I attest, 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		Date (mm/dd/yyyy)	
Last Name (Family Name)	First Name (Given Name)	Middle Initial (if any)	
Address (Street Number and Name)	City or Town	State	ZIP Code

Completing a Form I-9 Properly



SECTION 1 – Most common mistakes

- MISSING check mark next to the appropriate box to indicate whether they are a U.S. citizen or noncitizen national, lawful permanent resident of the U.S., or an alien authorized to work in the U.S.
- MISSING Alien Number/USCIS Number, Form I-94 admission number, or foreign passport number (including country of issuance), and the date employment authorization expires (if applicable) or N/A.
- MISSING Signature and the date.

NOTE... You should note whether your employee indicated in Section 1 that their employment authorization will expire. You may need to re-verify your employee's authorization prior to expiration.

Section 2 – Employer Review and Verification



SECTION 2 – Employer Review and Verification

- What to do:
 - Examine documents and validation of authenticity/eligibility to work.
 - Complete information in Section 2 within three (3) days of employee's first day of work for pay.

Section 2 – Employer Review and Verification



Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign **Section 2** within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see instructions.

List A		OR	List B	AND	List C
Document Title 1					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 2 (if any)		Additional Information <input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.			
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 3 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.					First Day of Employment (mm/dd/yyyy):
Last Name, First Name and Title of Employer or Authorized Representative 			Signature of Employer or Authorized Representative 		Today's Date (mm/dd/yyyy)
Employer's Business or Organization Name 		Employer's Business or Organization Address, City or Town, State, ZIP Code 			

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

Section 2 – Employer Review and Verification



1. **Step 1:** Examine document(s) employee presents and enter information on Form I-9.
 - a. The employer or authorized representative must either physically examine, or *examine consistent with an alternative procedure authorized by the Secretary of DHS*, the original, acceptable, and unexpired documentation the employee presents from the Lists of Acceptable Documents to complete the applicable document fields in Section 2.
 - b. You cannot specify which documentation an employee may present from the List of Acceptable Documents.
 - c. A document is acceptable if it is not expired, reasonably appears to be genuine and to relate to the person presenting it. Photocopies, *except for certified copies of birth certificates*, are not acceptable for Form I-9.
 - d. Employees must present one selection from List A, or a combination of one selection from List B and one selection from List C.
 - e. You may use common abbreviations for states, document titles, or issuing authorities, such as: “DL” for driver's license, and “SSA” for Social Security Administration.

Section 2 – Employer Review and Verification



- **Step 1:** Examine document(s) employee presents and enter information on Form I-9. (cont'd)
 - The Employee can choose which documents to provide to an employer.
 - Employer **MAY NOT** dictate which documents the Employee will provide.
 - Employee can provide one document from List A **OR** a document from both List B and List C.
 - List A documents verify identity and employment authorization.
 - List B documents verify identify.
 - List C documents verify employment eligibility.

Section 2 – Employer Review and Verification



- **Step 1:** Examine document(s) employee presents and enter information on Form I-9. (cont'd)
 - Enter the document information under either List A OR the combination of List B and List C headings.
 - Employee can choose to make copies of the documents the employee presents for the Form I-9 (however, if you participate in E-Verify OR if you are using the remote examination alternative, then copying of some documents is mandatory).
 - If you choose to make and keep copies it must be done for all employees.

Section 2 – Employer Review and Verification



- Copying Documents Provided by Employee... To Copy or Not to Copy...
 - Why to copy:
 - Copying allows for an Employer to perform an I-9 audit of the documentation at a later time.
 - Shows good faith to a suspicious ICE auditor.
 - Diminishes chances of a charge of knowingly hiring an undocumented alien.
 - Shows attempt to comply with Form I-9 requirements.
 - Could lower fines/violations if Employer makes a mistake in completing Section 2.
 - Why Not??
 - Employer is accepting documents that are clearly fraudulent....

Section 2 – Employer Review and Verification



- **Step 2:** Enter Additional Information, if necessary (i.e. EAD extension, replacement documents, termination dates, form retention dates, E-Verify case numbers, etc.)
- **Step 3:** You must select the box in the Additional Information area if you used an alternate procedure for document examination authorized by the Secretary of DHS. (i.e.. Remote Verification – *discussed further on next slide*)
- **Step 4:** Complete the Employer Certification. Employers or their authorized representatives, if applicable, must complete all applicable fields in this area, and sign and date where indicated.

Section 2 – Remote Verification (E-Verify Employers)



- This remote verification procedure is ONLY an option if the employer participates in E-Verify.
- Only applies to employees hired AFTER the employer has completed the E-Verify signup and training.
- Only applies to employees who are hired at a registered E-Verify hiring site.
- Employer must also be in “good standing” with E-Verify to utilize this option.
Good standing means the employer:
 - Is enrolled in E-Verify with respect to all hiring sites that use the alternative procedure to remotely examine documents,
 - Uses E-Verify to confirm the employment eligibility of newly-hired employees in the United States, and
 - Complies with all other requirements of the E-Verify program.

Section 2 – Remote Verification (E-Verify Employers)



- **Verification Procedure**

1. Employee provides copies of documents (front and back, if the document is two-sided) to the employer (i.e., via email, fax, secure upload, etc.);
2. Employer examines copies (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to ensure that the documentation presented reasonably appears to be genuine and relates to the employee;
3. Employer conducts a live video interaction with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and relates to the individual. The employee must first transmit a copy of the document(s) to the Employer (per Step 1 above) and then present the same document(s) during the live video interaction; and
4. Employer must retain a clear and legible copy of the documentation (front and back if the documentation is two-sided). In the event of a Form I-9 audit by a federal government inspector, you must make available copies of the identity and U.S. work authorization documentation the employee presented for remote document

Section 2 –Remote Verification (E-Verify Employers)



- Form I-9 Completion
 - On the Form I-9 dated 08/01/2023, check the box to indicate that you used an alternative procedure in the Additional Information field in Section 2.

- On the Form I-9 dated 10/21/2019, notate “Alternative Procedure” in the Additional Information field in Section 2. Note, this can only be done through 10/31/23.

Completing an I-9 Properly



SECTION 2 – Most Common Mistakes

- MISSING – List the document information under the correct heading (List A, List B, or List C)
 - Employee should only give you one List A document OR a List B document and a List C document – do not request or accept more documentation than is necessary.
- MISSING – Date of Hire.
- MISSING – Attestation.
- Attestation done by someone who DID NOT review the employee's original documents.

Supplement B - Reverification or Rehire (formerly Section 3)



Supplement B,
Reverification and Rehire (formerly Section 3)
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
Supplement B
OMB No. 1615-0047
Expires 07/31/2026

Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle initial (if any) from Section 1.
---	---	---

Instructions: This supplement replaces Section 3 on the previous version of Form I-9. Only use this page if your employee requires reverification, is rehired within three years of the date the original Form I-9 was completed, or provides proof of a legal name change. Enter the employee's name in the fields above. Use a new section for each reverification or rehire. Review the Form I-9 instructions before completing this page. Keep this page as part of the employee's Form I-9 record. Additional guidance can be found in the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#)

Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	Last Name (Family Name)	First Name (Given Name)	Middle Initial

Reverification: If the employee requires reverification, your employee can choose to present any acceptable List A or List C documentation to show continued employment authorization. Enter the document information in the spaces below.

Document Title	Document Number (if any)	Expiration Date (if any) (mm/dd/yyyy)
----------------	--------------------------	---------------------------------------

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 documentation I examined appears to be genuine and to relate to the individual who presented it.

Name of Employer or Authorized Representative	Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)
---	--	---------------------------

Additional Information (Initial and date each notation.)

☐ Check here if you used an alternative procedure authorized by DHS to examine documents.

Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	Last Name (Family Name)	First Name (Given Name)	Middle Initial

Reverification: If the employee requires reverification, your employee can choose to present any acceptable List A or List C documentation to show continued employment authorization. Enter the document information in the spaces below.

Document Title	Document Number (if any)	Expiration Date (if any) (mm/dd/yyyy)
----------------	--------------------------	---------------------------------------

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 documentation I examined appears to be genuine and to relate to the individual who presented it.

Reverification or Rehire



- **Reverification and Rehire (Supplement B, Reverification and Rehire (formerly Section 3))**

- **Reverification** – Employers need only complete and retain the Supplement B page when employment authorization reverification is required. *(Discussed in detail on next slide)*
- **Rehire** – Employers may choose to document a rehire on the supplement as well. Enter the employee's name at the top of each supplement page you use. In the New Name field, record any change the employee reports at the time of reverification or rehire. Alternatively, you may complete a new Form I-9 for rehired employees.
- Use a new section of the supplement for each instance of a reverification or rehire, sign and date that section when completed, and attach it to the employee's completed Form I-9. Use additional supplement pages as necessary. Use the Additional Information fields if the employee's documentation presented for reverification requires future updates.

Reverification or Rehire



- **Reverification**

- When reverification is required, you must reverify the employee by the earlier of the employment authorization expiration date stated in Section 1 (if any), or the expiration date of the List A or List C employment authorization documentation recorded in Section 2.
- Employers should complete any subsequent reverifications, if required, by the expiration date of the List A or List C documentation entered during the employee's most recent reverification.
- For reverification, employees must present acceptable documentation from either List A or List C showing their continuing authorization to work in the United States. You must allow employees to choose which acceptable documentation to present for reverification.
- Employees are not required to show the same type of document they presented previously. Enter the documentation information in the appropriate fields provided.

Reverification or Rehire



- **Reverification (cont'd)**

- Form I-9:
 - Enter the employee's full name from the original Form I-9 at the top of the supplement.
 - If the employee's name has changed, enter the new name in the appropriate New Name fields in one block of the supplement. Enter only the part of the name that has changed. For example, for employees who changed only their last name, enter the last name in the Last Name field and leave the First Name and Middle initial fields blank.
 - Enter the document title, number and expiration date in that block of the supplement.
 - You must sign, date and enter your name in the appropriate fields in that block. Keep this supplement page with the original Form I-9.

Reverification or Rehire



- **Reverification (cont'd)**

- If the employee cannot provide proof of current employment authorization, you **CANNOT** continue to employ that person.
- Employer **MUST** keep track of the date the document expires so re-verification is completed **ON OR BEFORE** the work authorization expires.
- You should not reverify the employment authorization of U.S. citizens and noncitizen nationals, or lawful permanent residents (including conditional residents) who presented a Permanent Resident Card (Form I-551) or other employment authorization documentation that is not subject to reverification (such as an unrestricted Social Security card).
- Reverification does not apply to List B documentation. Reverification may not apply to certain noncitizens.

Reverification or Rehire



- **Reverification – Remote Verification (E-Verify Employers)**

- If you are completing the remote documentation examination for a rehire or reverification, check the box on Form I-9 Edition 08/01/2023, in Supplement B.
- For reverification, **do not** create a new E-Verify case.

Remote Hires – Employer Not Participating in E-Verify



- Employers may designate an authorized representative to fill out Form I-9 on behalf of their company.
- If an authorized representative fills out Form I-9 on behalf on the employer, the employer is still liable for any violations in connection with the form or the verification process.
- When completing Form I-9, the employer or authorized representative must physically examine, with the employee being physically present, each document presented to determine if it reasonably appears to be genuine and relates to the employee presenting it.
- If a notary is acting as an authorized representative, no notary seal should be placed on the Form I-9.
- **Reviewing or examining documents via webcam/Skype/Zoom is not permissible.**

Form I-9 Storage



- Completed Forms I-9 and all accompanying documents should be stored in a safe and secure location.
- A Form I-9 may be generated, signed, and retained electronically, in compliance with Department of Homeland Security regulations at 8 CFR section 274a.2.
- Employers creating, modifying, or storing a Form I-9 electronically must review these and any other relevant standards for electronic signature, and the indexing, security, and documentation of electronic Form I-9 data.
- Keep Form I-9's in a separate location from the employee's personnel file. If DHS/ICE comes knocking, you do not want to provide the government with all of your personnel files.

Retention of I-9 Forms



- You must keep a completed Form I-9 on file for each employee on your payroll (or otherwise receiving remuneration) who was hired after Nov. 6, 1986 (or on or before Nov. 27, 2009, if employed in the CNMI). Never dispose of a current employee's Form I-9; you must keep it for as long as the employee works for you, and for a certain amount of time after they stop working for you. **Only when an employee stops working for you should you calculate how much longer you must keep their Form I-9. Federal regulations state you must retain a Form I-9 for each person you hire for three years after the date of hire, or one year after the date employment ends, whichever is later.**
- M-274 gives easy calculation:
 - 1) If the employee worked for less than two years, you should retain their form for three years after the date you entered in the First Day of Employment field.
 - 2) If the employee worked for more than two years, you should retain their form for one year after the date they stop working for you.

OR use this **I-9 Retention Calculator:**

1. Enter date employee started work: _____

Add 3 years to Line 1

A. _____

2. Termination date: _____

Add 1 year to Line 2

B. _____

Which date is later: A or B? Enter later date here.

C. _____

Automatic Employment Authorization Document (EAD) Extensions



- Some noncitizens with a pending Form I-765, Application for Employment Authorization, EAD renewal applications filed under certain employment eligibility codes may be eligible to receive an up to 540-day automatic extension of their employment authorization and/or EAD if they meet certain requirements:
 - The first temporary final rule applies to eligible EAD renewal applications that were timely filed between May 4, 2022, and October 26, 2023, and can be found at 87 FR 26614.
 - The second temporary final rule applies to eligible EAD renewal applications that were timely filed between Oct. 27, 2023, and Sept. 30, 2025, and can be found at 89 FR 24628.
- Applicable EAD Categories- A03, A05, A07, A08, A10, A12, A17, A18, C08, C09, C10, C16, C19, C20, C22, C24. C26 or C31
- Note, this does not include Deferred Action for Childhood Arrivals (DACA – EAD category C33).

Automatic Employment Authorization Document (EAD) Extensions



Other Tips



- Best way to correct a Form I-9 during an audit or if a mistake is made is to line through the portions of the form that contain incorrect information. Then, enter the correct information, initial and date the correction. **DO NOT USE WHITEOUT!!**
 - Employees are the only ones who can make changes to Section 1.
 - Employers can make changes to Section 2, however, circumstances dictate what changes are acceptable and when an entirely new Form I-9 is necessary.

Handbook for Employers



- Instructions on Completing the I-9 Form
 - M-274 – make sure you are using the most recent version – USCIS changes it often (Current version has revision date of July 2023 and review/update of 4/17/24).
 - <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>

E-Verify



E-Verify Overview



- What is E-Verify?
 - E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility.
 - Website for more information: <http://www.dhs.gov/e-verify>
 - Anyone signed up for E-Verify MUST review the E-Verify manual for employers (or federal contractors if applicable).
 - Must be completed within three (3) business days of the first day of work for pay.

E-Verify Overview



- **Users**

- Every person who uses E-Verify within a Company must be registered as either a program administrator or general user.

- **Posters**

- Two required posters MUST be visible to prospective employees.

- **Initial Results**

- Employment Authorized – employee authorized to work.
- Tentative Nonconfirmation – information mismatch, employee can work but additional processes must be completed.

- **Closing Cases**

- Every case MUST be closed in E-Verify after employment authorized or final non-confirmation (or if error and need to close case).

Tentative Non-Confirmation (TNC) Process



- **TNC Process**

- Employer must notify employee about their TNC result as soon as possible (within 10 federal government working days). After your employee is notified of their TNC and decides whether to take action to resolve the TNC, the employee should acknowledge the decision on the Further Action Notice, and the employer should notify E-Verify of their employee's decision. Employees who choose to take action to resolve a TNC are referred to SSA and/or DHS. Employers may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status. E-Verify Cases.

Both the employer and employee have responsibilities when E-Verify returns a TNC result:



E-Verify State Requirements for Private Employers



- Alabama: All employers are required to use E-Verify.
- Arizona: All employers are required to use E-Verify.
- Florida (Eff. 7/1/23): All employers with 25 or more employees are required to use E-Verify.
- Georgia: All employers with 10 or more full-time employees are required to use E-Verify.
- Mississippi: All employers are required to use E-Verify.
- North Carolina: All employers with 25 or more employees are required to use E-Verify.
- South Carolina: All employers are required to use E-Verify.
- Tennessee: All employers with 35 or more employees under the same FEIN are required to use E-Verify.
- Utah: All employers with 150 or more employees are required to use E-Verify.

E-Verify – IL Requirements



- Illinois - New law applying to employers who use E-Verify
 - Must display the notices supplied by the Office of Special Counsel for Immigrant-Related Unfair Employment Practices (OSC) and the Department of Homeland Security (DHS) in a place clearly visible to both prospective and current employees.
 - Only employees authorized to use E-Verify may do so under their own E-Verify credentials.
 - Cannot pre-screen prospective employees.
 - Cannot terminate an employee prior to that employee receiving a final non-confirmation notice from the Social Security Administration or the Department of Homeland Security.
 - Must notify the employee, in writing, of the employer's receipt of a tentative non-confirmation notice and of the employee's right to contest that tentative non-confirmation letter.
 - If a discrepancy in documentation, must inform the employee of the discrepancy and their right to representation.
 - If subject to a Form I-9 audit – must post notice at the Company's location.
 - Complete IDOL attestation form (keep at Company – do not need to provide to IDOL unless requested): <https://labor.illinois.gov/content/dam/soi/en/web/idol/laws-rules/legal/documents/attest.pdf>
 - IDOL FAQ's: <https://labor.illinois.gov/faqs/right-to-privacy-in-the-workplace-e-verify.html#faq-7whathappensifanemployersayssthatthereisadiscrepancyinanemployeesemploymentverificationinformation-faq>



AMUNDSEN
DAVIS



Thank you for joining us!



Sara Zorich, Partner

szorich@amundsendavislaw.com

(312) 894-3265

DISCLAIMER: The information and materials contained in this slide deck are for informational and educational purposes only and shall not be construed as legal advice. Consult an experienced attorney for specific questions and answers. Information included is up-to-date as of date listed. ©Amundsen Davis, LLC | www.amundsendavislaw.com