

The I-9 Employment Verification Process and E-Verify: *The Basics*

By Kate Kalmykov*

1. *What is the I-9, Employment Eligibility Form Requirement?*

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to use the Form I-9 to verify the identity and work eligibility of all employees hired after November 6, 1986. Employers are required to properly complete the Form I-9 every time they hire an employee (citizen or non-citizen) to perform labor or services in return for wages or other remuneration.

2. *What Offenses Can Employers Be Found Liable For?*

- Failure to complete the Form I-9
- Knowingly hiring, continuing to employ or contracting for the services of an unauthorized worker
- Providing or knowingly accepting false employment eligibility documents
- A documented pattern and practice of I-9 compliance violations

3. *What Are the Penalties for Non-Compliance with the I-9 requirements?*

Hiring or Continuing to Employ an Unauthorized Worker:

- First-time violators can be fined between \$275 and \$2,200 for each unauthorized worker
- Second-time offenders can be fined between \$2,200 and \$5,500
- For every offense thereafter, offenders can be fined between \$3,300 to \$11,000 per employee or worker

Paperwork Violators:

- Failure to complete, retain or present documents can result in fines of \$110 to \$1,100 per employee
- The second violation can cost \$220 to \$2,200

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Knowingly Hiring or Continuing to Employ Unauthorized Workers:

- Up to \$300 per unauthorized employee and/or 6 months in jail
- Individuals making false statements for purposes of satisfying I-9 requirements may be fined and/or face up to 5 years in jail

Pattern and Practice Violations

- \$3,000 per alien and six months in Jail

4. What is E-Verify?

E-Verify (formerly known as the “Basic Pilot Program”) is a voluntary computer system provided to employers by the United States Citizenship and Immigration Service (“USCIS”). This system allows employers to electronically verify the employment eligibility of newly hired employees.

5. How Does the E-Verify Program Work?

The employer submits information provided on the Form I-9 into the E-Verify online system. E-Verify then checks that information against the Social Security Administration and the Department of Homeland Security databases. Once the I-9 information is submitted the employer receives one of the following results within a matter of seconds:

- *Employment Authorized*
 - This means that the employee is authorized to work
- *Department of Homeland Security (“DHS”) Verification in Process*
 - DHS will usually respond within 24 hours with either an Employment Authorization or DHS Tentative Non-Confirmation response
- *Social Security Administration (“SSA”) Tentative Non-Confirmation*
 - There is an information mismatch with the SSA
- *Final Non-Confirmation*
 - The employee is not work authorized.

6. What Happens After You Receive the E-Verify Results?

- If *Employment Authorized* the employer records the system generated verification number on the Form I-9 or attaches a printout of the result screen. This ends the process. The employer’s obligation to re-verify remains only for time limited authorizations.
- If *Final Non-Confirmation* the employer records the system generated verification number on the Form I-9 or attaches a printout of the result screen.
- If *SSA Tentative Non-Confirmation* the employee can contest the finding and then:
 - Resolve the Social Security Number mismatch directly with the SSA
 - Resolve the non-citizen status mismatch directly with the DHS
 - The employee has eight federal government workdays from the date of referral to visit or call the appropriate agency to resolve the discrepancy
 - Note: The employee has the right to work while the case is being resolved

- If the employee chooses not to contest the Tentative Non-Confirmation, it is considered a Final Non-Confirmation and the employer may terminate the employee.

7. *Resolving a Tentative Non-Confirmation*

The employer will receive one of three results from the E-Verify online system:

- *Final Non-Confirmation*: the employee is not work authorized
- *Employment Authorized*: the employee is employment authorized
- Review and update employee data then resubmit query

8. *Proper Usage Tips*

- E-Verify is used ONLY to verify new hires and cannot be used to pre-screen
- E-Verify is only used within 3 days of the employee's actual start date
- E-Verify procedures are applied to all U.S. citizen and non-citizen employees
- Employers are required to post a notice informing prospective employees that they are an E-Verify participant
- Employers must post an Anti-Discrimination Notice issued by the Department of Justice, Office of Special Counsel visible to prospective employees
- E-Verify does NOT relieve employers of the I-9 employment eligibility verification requirement
- Form I-9 requirements remain the same for employers with the exception of "List B" identity documents which must have a photo identification
- Registration in E-Verify does not protect employers against worksite enforcement actions
- E-Verify participants can leave the E-Verify program only after providing 30 days notice to USCIS


Quick Reference Employer Do's and Don'ts in the I-9 Process


Before Hiring and When Interviewing

 DO NOT give any I-9 materials to job applicants. You must wait at least until the time of hire.

 DO NOT refuse to hire someone because of an expiration date on a document.

At the time of Hire/Start Date

 DO give new employees a Form I-9 and the list of acceptable documents on their first day on the job or at the time of hire.

 DO have a new employee complete the Form I-9 on the first day of employment.

- ✓ DO give the employee three days to present work eligibility documents.
- ✓ DO make sure the employee signs and dates the I-9 in Section 1.
- ✓ DO review the original documents presented by the employee during the I-9 process.
- ✓ DO make sure that the documents appear to be genuine and belong to the employee.
- ✗ DO NOT question documents that are on the list unless they obviously appear to be fake.
- ✗ DO NOT refuse any document that is on the acceptable list unless it appears fake.
- ✗ DO NOT suggest specific documents from the acceptable documents list or require specific documents from outside the list.
- ✓ DO make sure that the employer representative lists the documents reviewed in the correct column (A OR B and C) on the Form I-9.
- ✗ DO NOT list any document in column B or C if a list A document is used in column A.
- ✓ DO make sure to list a document in column C if one is listed in column B.
- ✗ DO NOT list more than one document in any column (A, B, or C).
- ✗ DO NOT accept a social security card marked “not valid for employment without authorization” unless the employee has presented additional proof of work authorization.
- ✓ DO accept USCIS receipts to replace a preexisting work authorization document in lieu of the document itself.
- ✗ DO NOT accept USCIS receipts for new employment authorization documents that are not replacement documents.
- ✓ DO reverify work authorization in ninety days when a receipt for a replacement document is accepted.
- ✓ DO have translators or preparers who help the employee fill out the form sign and date the Form I-9 in the appropriate place. Make sure that the employee does not complete this section.
- ✓ DO make sure all boxes requiring signature are completed.
- ✓ DO make sure the Form I-9 is filled out completely and legibly.

Storage and Retention

- ✗ DO NOT keep the Form I-9's with employee personnel or payroll files.

- ✓ DO keep the Form I-9's separate from all other Human Resources documents.
- ✓ DO separate the Form I-9's for current employees from former employees.
- ✓ DO keep former employee's documents in a separate binder tabbed by date of separation from employment and comply with applicable retention requirements.
- ✗ DO NOT keep Form I-9's longer than required, this increases liability.
- ✓ DO keep the Form I-9s for separated employees for three total years or one total year from the date of separation, whichever is later.

Reverification

- ✓ DO reverify status or work authorization documents with expiration dates through an internal tickler system.
- ✓ DO not reverify "green cards" with expiration dates.
- ✓ DO allow the employee three days to produce acceptable documents at the time of reverification.
- ✓ DO be consistent with all employees and job applicants.
- ✓ DO ask questions of your immigration counsel when you are not sure about an Form I-9 issue.
- ✓ DO attend regular trainings about federal I-9 requirements, which are ever-changing.

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