

Immigration Related Responsibilities When Hiring an Employee and Completing Form I-9

OVERVIEW

All U.S. employers are required to examine and verify the eligibility of each employee to be lawfully employed in the United States, regardless of the immigration status of the employee. This includes U.S. citizens, permanent residents of the United States, and temporary foreign workers as well as anyone to whom a job is offered. To verify an employee's status and to show that an employer has complied with the law Form I-9, Employment Eligibility Verification must be completed for every employee.

WHAT INFORMATION ARE YOU SEEKING? (PLEASE CHOOSE ONE BELOW)

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[Chapter 2](#) [Information about Other Responsibilities you may have, as an employer, under U.S. Immigration law](#)

[Read Disclaimer](#)

IMPORTANT: This document contains information that is no longer current but remains on our site for reference purposes.

Chapter 1 Information about Form I-9**OVERVIEW**

All employers must verify that each individual who is hired is eligible for employment in the United States, even if the individual is a United States citizen. Failure to do so can result in severe penalties against the employer. To verify that an individual is eligible for employment, the employer must complete a copy of Form I-9, "Employment Eligibility Verification," for each employee.

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Please Note: USCIS has launched "I-9 Central", a new online resource. I-9 Central can be viewed at www.uscis.gov/I-9central

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Unit 1 Information about Form I-9 (Frequently Asked Questions)

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What is Form I-9?

Form I-9 is the Employment Eligibility Verification Form issued by USCIS. By law, all U.S. employers are responsible for completion and retention of Forms I-9 for all U.S. citizen as well as non-U.S. citizen employees hired for employment in the U.S. after November 6, 1986. This process includes an employee's attestation of work authorization and an employer's review of the documents presented by that employee to demonstrate identity and work authorization. The employee and employer both must provide information and signatures as indicated on the form.

What version of Form I-9 should I use?

Effective March 8, 2013, employers should begin using the revised Form I-9 with a revision date of 03/08/13. The revision date of the form is printed on the lower left corner of the form. Employers may continue to use previous versions of the form with revision dates of 02/02/09 and 08/07/09 until May 7, 2013. For more information, please visit our Form I-9 Central webpage at www.uscis.gov/I-9central.

How do I obtain Form I-9?

Form I-9 may be downloaded from the USCIS website at www.uscis.gov.

Can I reproduce Form I-9?

Employers are permitted to reproduce Form I-9, provided that the resulting copy, facsimile, or scanned form is legible, the content and sequence of the information and instructions match those on the official USCIS document and the paper is of retention quality. Copies of the Form I-9 may be reproduced in either double-sided or single-sided format.

Who needs to complete a Form I-9?

Every newly hired employee must complete Form I-9, including citizens and nationals of the United States. Both the employer and the employee are responsible for completing Form I-9.

Note: All employers are required to examine all of their employees' work authorization statuses regardless of whether the employee is a U.S. citizen, permanent resident, or temporary foreign worker.

Who is responsible for completing the different sections of Form I-9?

The employee is obligated to complete [Section 1](#), Employee Information and Verification, of Form I-9 at the time of hire.

The employer is obligated, after physically examining the documents presented by the employee, to complete [Section 2](#), Employer Review and Verification, and [Section 3](#), Updating and Re-verification (if applicable), of Form I-9.

Can Form I-9 be filled out before the job is offered?

An individual should not complete a Form I-9 for an employer until after he or she has accepted the position.

Note: If a company has an individual complete Form I-9 but no job offer is extended, then the company could be faced with a claim of discrimination since Form I-9 asks about citizenship and alienage, and requires the production of documents that might indicate national origin.

When should Section 1 be completed?

Section one of Form I-9 must be completed and signed by every newly hired employee on or before the date of hire, regardless of his or her immigration status. The employee must attest that he or she is a U.S. citizen, lawful permanent resident, or is otherwise authorized to work for the employer in the United States. The employee must present the employer with documentation establishing identity and employment eligibility in accordance with the List of Acceptable Documents on Form I-9.

When should Section 2 be completed?

Section two of Form I-9 must be completed and signed by every employer within three business days of the hire. If the employment relationship will last less than three days, then section two must be completed at the time of hire. Section two must be completed and signed by every employer whether he or she employs thousands of employees or only one. The employer must ask each employee to provide documents that prove both his/her identity and his/her authorization to work. There are three lists on the back of the Form I-9 that sets forth acceptable documentation:

- List A (documentation establishing both identity and authorization to work)
- List B (documentation establishing only identity)
- List C (documentation establishing only authorization to work)

The employee may elect to provide one document from List A, or two documents, one from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

Note: Certain documents have been created and placed in the regulations as acceptable even though not indicated as such on Form I-9. Those Forms are:

- Form I-94 issued to Refugees – for the purpose of establishing initial employment eligibility; and
- Form I-94 issued to Asylees with “employment authorized” indicated on the reverse side - for the purpose of establishing employment eligibility only.

When should Section 3 be completed?

Employers should complete Section 3 of Form I-9 when updating and re-verifying the employment authorization of an employee whose previous valid authorization has expired. Section 3 does not apply to employees who are U.S. citizens or permanent residents. Section 3 should only be completed when the employee indicates in Section 1 of Form I-9 that he or she is an alien authorized to work until a certain date. For example, when a USCIS-issued employment authorization document is scheduled to expire, the employer must re-verify that the employee has renewed his/her authorization to work and has a valid document from either List A or one from both List B and List C in his/her possession. The employee can choose which documents to provide.

Except for employees who are U.S. citizens or permanent residents, employers should re-verify the employment authorization of each employee who has presented evidence of work authorization that contains an expiration date. Employers **CANNOT** specify which document(s) they will accept from an employee. Only the employee can choose the acceptable document(s) to provide.

Note: Section three of Form I-9 should only be completed when choice three in Section one is selected. It should not be used if the person is a permanent resident or a U.S. citizen.

Can I tell a potential employee which document(s) he or she must bring for verification?

No, an employer cannot tell an employee which documents to present for I-9 purposes. Employers may, however, direct the employee to the list of acceptable documents shown on the back of Form I-9 as well as the special instructions regarding the most current list of acceptable documents contained on the USCIS website at www.USCIS.gov. If an employee presents documents not appearing on the list, an employer should ask for additional proof of identity and/or employment authorization.

An employer who requests specific documents, such as a driver's license and a Social Security card, may be charged with document abuse and fined accordingly.

Note: Citizens and non-citizens must be treated identically in completing Form I-9.

How do I know if a document is genuine or false?

An employer is not required to know with absolute certainty whether a document is genuine or false. The law merely requires that an employer examine the original of the document (not a photocopy) and make a good faith determination that the document:

- Appears to relate to the employee;
- Appears to be genuine; and
- Is an acceptable document for Form I-9.

An employer must refrain from overzealous scrutiny of documents. The rejection of a questionable document that later proves to be genuine may result in a violation of the anti-discrimination provisions of the Immigration laws of the U.S. Also, an employer who singles out a particular nationality or ethnic group for a higher level of scrutiny may face sanctions under the law.

Can I confirm an employee's work authorization by contacting the government?

ONLY officially registered participants in the Department of Homeland Security's automated verification system can receive confirmation of work authorization of a newly hired employee by contacting the government. This program is called E-Verify. E-Verify is an online application to verify the employment eligibility of newly hired employees, regardless of citizenship. For more information about E-Verify, please visit our webpage at www.dhs.gov/e-verify.

Can photocopies be accepted?

No, photocopies of documents cannot be accepted for Form I-9 purposes. Employees must present original documents.

The only exception is that a newly hired employee may present a certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal. Beginning October 31, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010, are acceptable for Form I-9 purposes.

What if the person we hire only has temporary work authorization?

An employee that has been issued temporary work authorization must produce proof of continued work authorization before the date of expiration. Employers should try to remind the employee 90 days prior to the expiration of his or her current work authorization.

Except for employees who are U.S. citizens or permanent residents, employers should re-verify the employment authorization of each employee who has presented evidence of work authorization that contains an expiration date.

What if my employee was granted work authorization through TPS?

Unfortunately, applications for an employment authorization document may not be processed in time. Therefore, employers with employees who have been granted work authorization via TPS must be careful to monitor expiration dates and stay up-to-date with employees' work authorization status as well as notices published by USCIS in the Federal Register or on the uscis.gov website. Failure to do so could result in sanctions from continued hiring of an employee who has lost work authorization or the inappropriate firing of an employee who continues to have work authorization.

Who is required to do the re-verification of an employee's work authorization?

All employers are responsible for re-verifying the employee's work authorization.

What is the portability provision for an H-1B visa holder?

The portability provisions allow a nonimmigrant alien, who was previously issued an H-1B visa or who was otherwise accorded H-1B status, to begin working for a new H-1B employer as soon as the new employer files an H-1B petition for the alien, rather than having to wait for USCIS approval.

If I have filed a petition for an extension of status for my employee, can I continue employing him or her?

Yes, after filing a non-frivolous petition for extension of status for your employee, you may continue to employ him or her for up to 240 days. This 240-day rule is limited to the following non-immigrant visa classifications: A-3, E, G-5, H, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN.

How would an employer fulfill the Form I-9 verification requirement under the 240-day rule?

Regulations authorize employment with the same employer for up to 240 days after a non-frivolous petition for extension of status is filed. While the employment is authorized, there is no provision on the Form I-9 for the documentation of this fact. Therefore, employers may want to follow whatever documentation procedures they use for the 240-day grace period.

Does this new portability provision affect the way the company completes Form I-9?

Form I-9 contains no provision for this authorization. Therefore, employers should follow the documentation procedures they currently use for an extension of this type. As an example, the employer could attach a copy of the receipt notice for the filed H-1B petition along with a copy of the alien's I-94 to the Form I-9 kept on file or the employer could write "covered by the H-1B portability provision" on the Form I-9. An employee may obtain a copy of his/her Form I-94 at www.cbp.gov/I94.

Are there any exceptions to completing Form I-9?

Yes. Independent contractors or those persons who were hired prior to November 6, 1986 are exempted from completing Form I-9.

What is remuneration?

Remuneration is anything of value given in exchange for labor or services rendered by an employee, including food and lodging.

How can I obtain the Form I-9 handbook?

Copies of the Form I-9 Handbook can be ordered by calling (800) 870-3676. The Form I-9 Handbook may be downloaded from the USCIS website at www.uscis.gov/files/form/m-274.pdf

The Form M-274, Employer Handbook, contains instructions for completing Form I-9, Employment Eligibility Verification.

- Please read the instructions carefully and note that many changes have occurred in the regulations since the publication of the handbook. Therefore, the handbook may not be all-inclusive or up-to-date. The handbook was last updated on January 5, 2011.

Can I do something to help my employee get a Social Security card?

An employer who wishes to assist an employee in getting a Social Security card may do so by obtaining the **Form SS-5, "Application for a Social Security Card."** The Form SS-5 includes the instructions for completing the application and documents needed.

The Form SS-5 can be obtained by:

- Downloading via the Internet at <http://www.ssa.gov/>; or
- Calling the Social Security Administration at 1-800-772-1213.

Note: The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

What is an EAD?

Certain foreign nationals who are temporarily in the U.S. may file a Form I-765, *Application for Employment Authorization*, to request an Employment Authorization Document (EAD), which authorizes them to work legally in the U.S. during the time the EAD is valid.

How long is the validity period of an EAD?

Foreign nationals usually apply for an EAD when they apply for adjustment of status to that of permanent resident. Therefore, they usually file Form I-765, *Application for Employment Authorization*, together with Form I-485, *Application to Register Permanent Residence or Adjust Status*, with USCIS.

Initial EAD filings will generally receive an EAD that is valid for one year because they are usually submitted with Form I-485 that can only be filed when there is an immigrant visa number available to the foreign national. However, when their visa availability date retrogresses (i.e., when demand for visa numbers exceeds forecasted supply), and a visa number is no longer available, then the foreign national may receive an EAD that is valid for two years.

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Unit 2 **Information about documents that are acceptable to establish both identity and employment eligibility****OVERVIEW**

The following documents are acceptable evidence to establish both identity and employment eligibility as long as they relate to the individual who is presenting the document:

- A U.S. passport or U.S. Passport Card;
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa; or
- Employment Authorization Document that contains a photograph (Form I-766);

In certain cases, USCIS may grant the individual an immigration status of E, H, L, O, P, or Q. For such an individual, an unexpired foreign passport is acceptable proof of identity and employment eligibility if the individual also has a Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations indicated on the form.

Passports 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 U.S. and the FMI or RMI are also acceptable proof of identity and employment eligibility.

[Which List A documents are acceptable?](#)

[What documentation can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?](#)

[What if an employee does not have a document from List A?](#)

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Which List A documents are acceptable?

The following documents are acceptable evidence for both identity and employment eligibility so long as they relate to the individual who is presenting the document:

- A U.S. passport or U.S. Passport Card;
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551);
- Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa;
- Employment Authorization Document that contains a photograph (Form I-766);
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form. An employee may obtain a copy of his/her Form I-94 at www.cbp.gov/I94.
- 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 U.S. and the FMI or RMI.

Note: Citizens of the Republic of Palau must possess a valid Employment Authorization Document (EAD) before working in the United States. (Although citizens of the FSM and RMI no longer need an Employment Authorization Document (EAD) to work in the United States, the Compact did not include Palau. Citizens of Palau are still required to obtain an EAD as evidence of their eligibility to work in the United States).

What documentation can an F-1 OPT student, who has filed either an H-1B petition or a STEM OPT extension, show to satisfy Form I-9 requirements?**F-1 students who have filed a STEM OPT extension:**

An F-1 student who has timely filed Form I-765 for a 17-month STEM extension of his/her post-completion OPT, and whose EAD (Form I-766) has expired, is authorized to continue working while the Form I-765 application is pending for a period not to exceed 180 days.

The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

- The expired Form I-766 EAD; and
- The USCIS receipt notice (Form I-797, Notice of Action) showing a timely filing of the Form I-765 extension application; and
- Form I-20 updated to show that the DSO recommended the STEM extension for a work authorization period beginning on the date after the expiration of the EAD.

This combination of documents satisfies the Form I-9 document presentation requirements for 180 days (or less if the application is denied beforehand). If the 17-month STEM extension is approved, the student should receive a new Form I-766 EAD within the 180-day period.

F-1 OPT students who have filed an H-1B petition:

The Designated School Official (DSO) will issue a “cap-gap” Form I-20 which will show on page 3 that the student’s employment authorization has been extended and the effective dates.

The following documents constitute the equivalent of an unexpired EAD under List A, # 4 of the Form I-9:

- The expired Form I-766 EAD; and
- A “cap-gap” Form I-20 endorsed to show that the student’s employment authorization is still valid; and
- The USCIS receipt notice (Form I-797, Notice of Action) showing receipt of the H-1B petition.

This combination of documents satisfies the Form I-9 document presentation requirements until September 30th, or until the date of the denial of the H-1B petition. If the receipt notice has not yet been issued, the expired EAD and the “cap-gap” Form I-20 are sufficient. This combination of documents satisfies the Form I-9 until the expiration date noted on the “cap-gap” Form I-20, but not later than September 30th. If the student presents a “cap-gap” Form I-20 without a receipt notice, the employer must re-verify upon the expiration date noted on the Form I-20. The student may present another “cap-gap” Form I-20 indicating continued employment authorization to satisfy the re-verification requirement.

What if an employee does not have a document from List A?

Employers **CANNOT** specify which document(s) they will accept from an employee. If an employee does not present a document from List A, he or she must provide the employer with one document from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

Unit 3 **Information about documents that are acceptable to establish identity only****OVERVIEW**

The Form I-9 lists the documents that are acceptable evidence to establish identity for individuals 18 years of age or older. If a prospective employee shows an employer a document indicated in List B on the Form I-9 instructions, then the individual must also show the employer a separate document from List C that establishes employment eligibility.

[Which List B documents are acceptable?](#)

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Which List B documents are acceptable?

Certain documents are only acceptable as evidence to establish identity for individuals 18 years of age or older. If a prospective employee shows an employer one of the following documents, the individual must also show the employer a separate document that establishes employment eligibility. Documents that are acceptable for establishing identity include:

- Driver's license or ID card issued by a State or outlying possession of the U.S. provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address;
- 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;
- School ID card with a photograph;
- Voter's registration card;
- U.S. military card or draft record;
- Military dependent's ID card;
- U.S. Coast Guard Merchant Mariner Card;
- Native American tribal document; or
- Driver's license issued by a Canadian government authority.

For individuals under the age of 18 who are unable to present a document listed above:

- A school record or report card;
- A clinic, doctor, or hospital record; or
- A day-care or nursery school record.

Unit 4 **Information about documents that are acceptable to establish employment eligibility only****OVERVIEW**

The Form I-9 lists the documents that are acceptable evidence to establish employment eligibility. If a prospective employee shows an employer a document indicated in List C on the Form I-9 instructions, then the individual must also show a separate document from List B that establishes identity.

Which List C documents are acceptable?

Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?

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Which List C documents are acceptable?

Certain documents are only acceptable as evidence to establish employment eligibility. If a prospective employee shows an employer one of the following documents, the individual must also show a separate document that establishes identity. Documents that are acceptable for establishing employment eligibility are:

- Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the U.S.;
- Certification of Birth Abroad issued by the Department of State (Form FS-545);
- Certification of Report of Birth issued by the Department of State (Form DS-1350);
- Original or certified copy of a birth certificate issued by a State, county, municipal authority, or territory of the U.S. bearing an official seal;
 - **Beginning October 31, 2010, if an employee presents a Puerto Rico birth certificate for List C, the employer must look at the date the certified copy of the birth certificate was issued to ensure that it is still valid. As of October 1, 2010, only certified copies of Puerto Rico birth certificates issued on or after July 1, 2010 are acceptable for Form I-9 purposes.**
- Native American tribal document;
- U.S. Citizen ID Card (Form I-197);
- Identification Card for Use of Resident Citizen in the U.S. (Form I-179); or
- Employment authorization document issued by the Department of Homeland Security.

To establish initial employment eligibility, a refugee may use Form I-94. Then, within 90 days of being hired, the refugee must present either: an unexpired Form I-766 or a Social Security card that does not display any employment restrictions. The refugee must also present a document which establishes the individual's identity. If an individual has been granted asylum, the individual must present a Form I-94 which indicates that the bearer has been granted asylum or "asylee" status. Even though it is not required by immigration law, an asylee should also present a Social Security card, which does not display any employment restrictions, within 90 days of being hired.

The Social Security Administration has improved the security features of Social Security Cards. The new security features are reflected in the October 2007 version of the card. However, all prior versions of the Social Security Card are still valid and may continue to be used.

Is a receipt showing that the employee has filed for a new employment authorization document acceptable as evidence of continuing eligibility for employment?

The employee may in certain instances use receipts instead of original documents during the Form I-9 process. If an employee's document has been lost, stolen, or damaged, then the employee can present a receipt for the application for a replacement document. The replacement document needs to be presented to the employer within 90 days of hire, or, in the case of re-verification, the date the employment authorization expires. In these cases, the previous document must still have been otherwise valid (i.e., the employee would still have been within the validity period previously granted if not lost, stolen, etc.).

It is important to note that a receipt for an application for an initial or renewal (as opposed to a replacement) USCIS Employment Authorization Document (EAD) filed on a Form I-765, Application for Employment Authorization, is NOT an acceptable document for I-9 verification purposes.

Note: There are exceptions to this receipt rule.

- Under the H-1B portability provision, H-1B employees may begin working for the new employer once that employer has filed a new petition for the employee.
- Employees in the following nonimmigrant visa categories may continue to work for 240 days after the expiration of their current period of stay, as long as an extension of stay has been filed with USCIS: A-3, E-1, E-2, G-5, H-1, H-2A, H-2B, H-3, I, J-1, L-1, O-1, O-2, P-1, P-2, P-3, R, and TN.
- Sometimes Temporary Protected Status (TPS) beneficiaries might not have sufficient time to apply for and receive their new EADs before the expiration of their current EADs. When DHS anticipates that this may be the case, DHS will automatically extend the validity of EADs issued under the TPS designation for an additional 6 months. As evidence of continuing eligibility for employment, TPS beneficiaries may show employers and government agencies the following documents: (1) a TPS-related EAD, and (2) a copy of the Federal Register notice showing that the EADs had been automatically extended for an additional 6 months. For more information on TPS, please refer to the "Temporary Protected Status" section.

Unit 5 **Information about how to properly retain completed copies of the Form I-9****OVERVIEW**

After Form I-9 has been completed by the employer and the employee, USCIS suggests that the employer and the employee review it for completeness. The employer should store all I-9 Forms separately from other employee personnel records.

If the employee has a temporary work authorization, the employer should track its expiration date. The employer should periodically review all I-9 Forms to ensure that they comply with their expiration dates. Employers should store the I-9 Forms for terminated employees in a separate file.

An employer must retain Form I-9 for three years after the hire date or one year after the date of the employee's termination, whichever is later. A recruiter or a "referrer for a fee" must retain Form I-9 for three years after the date of hire.

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What do I do with Form I-9 after it is completed?

The employer must retain Form I-9 for each employee either for three years after the date of hire or for one year after employment is terminated, whichever is later.

How should Form I-9 be stored?

While not required by law or regulation, it is suggested that the original Form I-9 should be filed in a separate file away from the employee's personnel file.

Can I store Form I-9 electronically?

Yes, you may sign and store Form I-9 electronically in addition to storing the form on paper, microfilm or microfiche. More information for the electronic signature and storage of Form I-9 can be found on the USCIS website, [I-9 Central](#).

How long should Form I-9 be retained?

Form I-9 must be retained for a period of three years after the date of hire or one year after the date employment ends, whichever is later.

If an employee is fired or employment is terminated, am I still required to keep Form I-9?

Yes, you must retain Form I-9 for fired employees or for employees who terminate employment. These records must be kept for a period of three years after the date of hire or one year after the date employment ends, whichever is later. While not required by law or regulation, Form I-9 may be pulled out and placed in a separate file for fired employees as well as for those employees who have terminated employment.

Can I make and keep copies of the documents used in Section 2 of Form I-9?

Yes, you may keep copies of the Section 2 documents along with the Form I-9. However, if this is done, the policy should be applied to all employees. It is important that you be consistent in making photocopies for **all** employees, regardless of citizenship or nationality.

As an employer, do I need to re-verify a birth certificate presented by an existing employee born in Puerto Rico?

No. Employers must not re-verify the employment eligibility of existing employees who presented a certified copy of a Puerto Rico birth certificate for Form I-9 purposes and whose employment eligibility was verified on Form I-9 **prior to October 31, 2010**.

Would DHS ever audit employers for the completion and retention of Forms I-9?

Yes, DHS may randomly conduct an audit of an employer's Forms I-9. Please bear in mind that failure to comply with a DHS audit is a violation of federal law and can result in significant and costly fines or even an imposition of criminal penalties.

Completed Forms I-9 are not filed with the federal government. Instead, they must be retained by the employer in its own files and made available for inspection by DHS, the Special Counsel for Immigration-Related Unfair Employment Practices (OSC), or the Department of Labor (DOL) for three years after the date of hire or one year after the date the employee's employment is terminated, whichever is later.

What happens if Form I-9 is not completed when filed or if it is not retained?

An employer faces penalties of not less than \$110 and not more than \$1,100 for each employee for whom a Form I-9 was not properly completed or retained.

What if I request additional documents to establish work authorization?

For requesting more or different documents, a fine of not less than \$110 and not more than \$1,100 will be imposed for each individual discriminated against.

What do I need to do if I notice an error on a Form I-9 and I need to revise it?

If you notice an error on a Form I-9 after it is completed, simply make the appropriate change to the error, and initial and date the change. If the employee made the error, request that the employee make the change needed. Whoever makes such a change or correction to a Form I-9 must initial and date the correction.

What are the penalties for knowingly hiring aliens without proper work authorization or unauthorized aliens?

The following are the penalties or fines, *per* unauthorized employee, that an employer who hires or continues to employ aliens who do not have proper work authorization may face:

- First offense: not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than \$375 and not exceeding \$3,200, for each unauthorized alien with respect to whom the offense occurred on or after March 27, 2008;
- Second offense: not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008, and not less than \$3,200 and not more than \$6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008; or
- Subsequent offenses--not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008 and not less than \$4,300 and not exceeding \$16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008.

Employers who fail to comply with the employment verification requirements shall be subject to a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than \$110 and not more than \$1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999.

Any person or entity that knowingly engages in a pattern or practice of hiring, or recruiting or referring for a fee for the employment of an unauthorized alien in the United States shall be fined not more than \$3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other federal law relating to fine levels.

As the Attorney General deems necessary, civil action may be brought in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against an employer who the Service has reasonable cause to believe is engaged in a pattern or practice of employment, recruitment, or referral in violation of law.

Are there any penalties for unlawful discrimination?

Yes, there are penalties for unlawful discrimination by an employer against individuals who have work authorization.

The fines would be:

- First offense: Not less than \$375 and not more than \$3,200 for each individual discriminated against;
- Second offense: Not less than \$3,200 and not more than \$6,500 for each individual discriminated against; and
- Subsequent offenses: Not less than \$4,300 and not more than \$16,000 for each individual discriminated against.

Fines for document abuse range from \$110 to \$1,100 for each victim.

Chapter 2 Information about Other Responsibilities you may have, as an employer, under U.S. Immigration law**OVERVIEW**

Federal law prohibits discrimination in hiring a prospective employee based upon the individual's immigration status or citizenship.

- [Unit 1](#) Information about how to avoid discrimination against individuals who have been authorized to work in the U.S. and information about the penalties for discrimination
- [Unit 2](#) Information about the requirement to pay for an employee's transportation costs to return overseas if the employer dismisses the employee
- [Unit 3](#) Information about the requirement to pay employees fair and equitable wages

[Back to Form I-9 Immigration Related Responsibilities](#)

Unit 1 **Information about how to avoid discrimination against individuals who have been authorized to work in the U.S. and information about the penalties for discrimination****OVERVIEW**

Form I-9 lists the acceptable documents that a prospective employee may provide to the employer in order to establish his eligibility to work in the United States. The prospective employee is entitled to choose the document or documents that he presents to the employer. The employer cannot demand specific documents from a prospective employee or specify which documents the individual must provide. To avoid discrimination based on an individual's immigration status or citizenship, the employer should treat all people equally when announcing a job, taking applications, performing interviews, making job offers, verifying the individual's eligibility to work, hiring of the individual, and termination of the individual's employment. U.S. Immigration law prohibits discrimination, on the basis of citizenship, against protected individuals. Protected individuals include citizens or nationals of the United States, lawful permanent residents, temporary residents, and persons who have been granted refugee or asylee status. The U.S. Department of Justice has an Office of Special Counsel. This Office investigates and prosecutes charges of unlawful employment practices related to immigration.

[Are there any penalties for unlawful discrimination?](#)

[What if an employee does not have a document from List A?](#)

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- Subsequent offenses: Not less than \$4,300 and not more than \$16,000 for each individual discriminated against.

Fines for document abuse range from \$110 to \$1,100 for each victim.

What if an employee does not have a document from List A?

Employers **CANNOT** specify which document(s) they will accept from an employee. If an employee does not present a document from List A, he or she must provide the employer with one document from List B and one from List C. Only the employee can choose the acceptable document(s) to provide.

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Unit 2 **Information about the requirement to pay for an employee's transportation costs to return overseas if the employer dismisses the employee****OVERVIEW**

USCIS grants certain alien workers an H-1B, H-2B, or H-2R immigration status. If the employer dismisses an alien with such a status prior to the expiration date of the individual's authorized period of stay, the employer is required to pay the reasonable costs for the individual's return transportation abroad. If the alien employee voluntarily terminates his employment prior to the expiration date of his authorized period of stay, the alien is not considered as having been "dismissed," and the employer is not required to pay for the individual's return transportation.

What is a U.S. employer held liable for once an H-1B, or H-2B nonimmigrant is employed?

What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is employed?

What is a U.S. employer or petitioner held liable for once an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is employed?

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What is a U.S. employer held liable for once an H-1B, or H-2B nonimmigrant is employed?

Under immigration law, a U.S. employer is liable for the reasonable costs of return transportation abroad of the H-1B, H-2B, or H-2R if they terminate the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

What is a U.S. employer held liable for once an O-1, P-1, P-2, or P-3 nonimmigrant is employed?

Under immigration law, both the U.S. employer and the nonimmigrant are “jointly and severally” liable for the reasonable costs of return transportation abroad of the O or P nonimmigrant if the employer terminates the nonimmigrant prior to the expiration of the period of authorized admission. However, there are other general employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

What is a U.S. employer or petitioner held liable for once an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN nonimmigrant is employed?

An employer or petitioner applying for an H-1C, H-2A, H-3, L-1, Q-1, R-1, or TN has employment responsibilities not covered by immigration law. These inquiries should be directed to the [Department of Labor](#).

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Unit 3 **Information about the requirement to pay employees fair and equitable wages****OVERVIEW**

All workers, regardless of their immigration status, are afforded the full benefits and protections of U.S. labor laws. In certain cases, to employ foreign nationals, the employer must file a Labor Condition Application or an Application for Alien Employment Certification with the Department of Labor. On these applications, the employer must attest that, at a minimum, the employer will pay the prevailing wage for the position and the employer will maintain the working conditions that are being offered. Any petition filed on behalf of a foreign national, which requires an offer of employment, must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage.

For information about the employer's attestation requirement to pay fair and equitable wages, please see the U.S. Department of Labor's website: www.foreignlaborcert.doleta.gov

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Disclaimer

The information contained here is a basic guide to help you become generally familiar with many of our rules and procedures. Immigration law can be complex, and it is impossible to describe every aspect of every process. After using this guide, the conclusion reached, based on your information, may not take certain factors such as arrests, convictions, deportations, removals or inadmissibility into consideration. If you have any such issue, this guide may not fully address your situation, as the full and correct answer may be significantly different.

This guide is not intended to provide legal advice. If you believe you may have an issue such as any described above, it may be beneficial to consider seeking legal advice from a reputable immigration practitioner such as a licensed attorney or nonprofit agency accredited by the Board of Immigration Appeals before seeking this or any immigration benefit.

For more information about immigration law and regulations, please see our website at www.uscis.gov.

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