

The I-9 Form: A New Form but Old Compliance Issues

The I-9 (“Employment Eligibility Verification”) form is the form mandated by the Federal government for all employers to use to verify the identity and the eligibility to work of all employees hired after November 6, 1986. **It must be filled out within 3 business days of employment.** The US Department of Homeland Security recently issued a **new I-9 form** that must be used by all employers. You will find it attached. You can also obtain a copy at:

<http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>.

This same form is used to update or reverify information on a previous I-9 form if that information changes or the employee’s work authorization expires. Please be sure to discard any older I-9 forms you may have on file.



There are **three sections** to the form. **The employee must complete Section 1 on or before the day employment begins. Section 2 requires the employee to present to the employer original documents (no copies) that establish identity and employment eligibility.** The employee has 2 business days to

present the documents. **On the backside of the new form are the three lists of acceptable documents.**

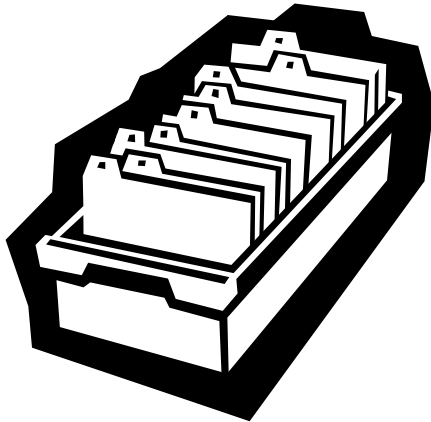
- **List A** lists documents that establish both identity and employment eligibility (e.g., a US passport). Any one of these documents will satisfy I-9 requirements. In lieu of having one of these,
- **List B** lists documents that **establish identity** and
- **List C** lists documents that **establish employment eligibility**.

The employer cannot specify which documents from each list will be acceptable. There are some special rules for minors or the disabled who are unable to supply documents from these lists (e.g., minors may supply school records to replace a List B document—call HR for details). The employer must examine the documents presented to determine if they are reasonably genuine, and list them on the I-9 form. The employer then signs, under penalty of perjury. **Section 3 is filled out by the employer for updating or reverifying information originally provided, then signed under penalty of perjury.**



(Please turn over)

Document retention and copies—The I-9 form must be kept for 3 years after the date of hire, or for 1 year after employment has ended, whichever is the latter. It should not be kept in the personnel file of the employee, both to avoid charges of discrimination and to facilitate the ability to produce them at the time of an audit. A separate file should be set up. Copies of all documents examined are not required, but it may be advisable. If the decision is made to keep copies, then the practice should be applied consistently to all employees.



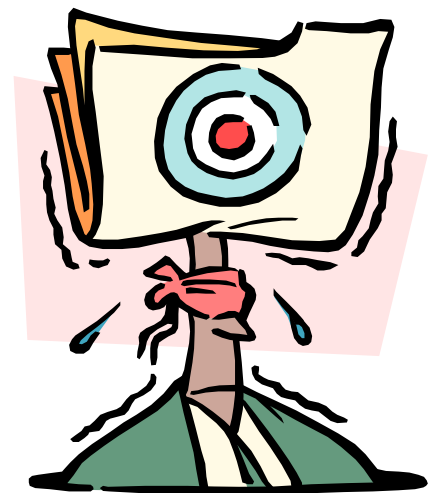
Self-audit—If an audit has not been conducted recently at your site, it would be a good idea to **check to see if every active employee has a completed I-9 on file** (and see if every terminated employee has one on file if retention is required—see above). Past violations cannot be retroactively corrected. Missing information should be clearly inserted, and initialed and dated when inserted. Incorrect information should be corrected, initialed and dated. There is a good faith defense if we are correcting past errors.

There is a balancing act involved. Employers may not discriminate against workers based on ethnicity, ancestry or national origin. They may appear to discriminate if they ask for more proof of identity or eligibility than the law requires, refuse to honor documents that seem valid, or ask “foreign looking” individuals for more or different proof.

Fines and Penalties Against the Employer for Non-compliance—A variety of civil or criminal penalties can result if the employer fails to comply with I-9 requirements. Examples of employer offenses include:

- Failure to properly complete an I-9 form
- Knowingly hiring, continuing to employ or contracting to obtain the services of an undocumented worker
- Providing or knowingly accepting false social security cards
- Pattern and practice of I-9 compliance failure

Paperwork violations can result in fines between \$100 and \$1100 for each individual for which a mistake is made. Substantive violations can result in fines between \$200 and \$2000 per unauthorized worker for first-time offenders (and \$2000-\$5000 for second-time offenders). Criminal penalties may be imposed where a pattern of knowingly hiring unauthorized workers is found.



Call us at Human Resources at (415) 614-5538 if you find a problem or if you have any questions regarding our obligations to comply with these legal requirements.