

The 101 on Form I-9 and employment eligibility verification



While the pandemic and widespread implementation of remote work have turned the hiring process for many businesses upside down, employers are still responsible for completing and filing I-9 forms. There may have been more forgiveness in 2020 and early 2021, however, as things settle down you're much less likely to find lax oversight of this requirement.

Employers hiring new workers must complete an employment eligibility verification using Form I-9 from the U. S. Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS). New hires must complete section 1 by their first day of work. Employers have 3 business days from the date of hire to complete section 2. Form I-9 requires workers to prove they are legally authorized to work under the Immigration Reform and Control Act of 1986 (IRCA). The federal law is enforced by DHS as well as the U.S. Department of Labor and the U.S. Department of Justice.

Under IRCA, only U.S. Citizens and noncitizen nationals whose immigration status includes work authority may be hired. New hires who are not permanently authorized to work may apply for an Employment Authorization Document using Form I-766. The federal law placed responsibility on employers to complete employment verification checks. A properly vetted and complete Form I-9 allows employers to prove they are in compliance. Recruiters who place employees must also complete Form I-9 as if they were the employer.

Here's how to properly complete the Form I-9 process.

First, review lists of acceptable documents at the DHS.gov [website](#) and at [I-9 Central](#). DHS also provides a [handbook for employers](#). Then follow this three-step process:

Section One: Employee information and attestation

Inform new hires that they must complete Section One before they start work. DHS allows the use of preparers and translators if a new hire needs one. Translators must complete a [translator certification](#) under penalty of perjury. Along with the name (including maiden and other names used), date of birth, and address, new hires also include their immigration status. They check a box indicating whether they are a U.S. citizen, a noncitizen national, a lawful permanent resident of the U.S., or an alien authorized to work in the U.S.

New hires must also include proof of immigration status. In addition, they must include their Alien Number/USCIS Number, Form I-94 admission number, or foreign passport number (including country of issuance), and the date employment authorization expires. Section One must also be signed and dated. If an employer participates in the E-verify program, then new hires must also fill out their social security number.

Section Two: Employer review and attestation

Within 3 business days of a new hire starting work, the employee must show the employer unexpired original documentation including expiration dates proving identity and employment authorization. There are three document lists - List A, List B and List C.

- **List A** includes documents that show both identity and employment authorization. Documents include U.S. Passports or passport cards, Permanent Resident cards, Employment Authorization Document Card, Foreign Passport with Form I-94 showing work authorization and nonimmigrant status
- **List B** documents show identity. List B includes state drivers' licenses and other official identity cards including Native American tribal documents.
- **List C** documents show employment authorization. List C includes a U.S. Social Security card, certificate of birth abroad, original or certified state birth certificates and DHS employment authorization documents.

Because employees must prove both their identity and work authorization, new hires only need to produce one document from List A or one from both List B and List C. Employers or their authorized representatives must physically examine the documents within 3 days of the first day of employment, determine whether they reasonably appear genuine and verify review on Form I-9. Employers must make copies of the presented documents for retention and should note all expiration dates.

Section Three: Reverification and rehires

Employers are responsible for keeping track of work authorization document expiration dates. They must then reverify work authorization by the expiration date. It's best to request the documents 90 days before. However, you do not need to reverify authorization for those who presented documents proving they are U.S. Citizens, noncitizen nationals, or lawful permanent residents who presented an I-551 stamp. Nor do you need to reverify List B documents. Use the most current version of Form I-9 when you reverify and attach a copy of the original form. Employers who rehire employees within 3 years of completing a Form I-9 may use that form and fill out Section 3 or complete a new one. For current employees who have changed names, you should note the change on the form previously used for I-9 completion.

E-verify

Employers can also use USCIS's [E-verify](#) program to determine whether a new hire is authorized to work. The program is web-based and voluntary for most employers and mandatory for others like federal contractors. E-Verify employers verify the identity and employment eligibility of new hires by electronically matching information provided on Form I-9 against records available to the Social Security Administration (SSA) and the U.S. Department of Homeland Security. Results are available within a few seconds and will either state that the new hire or current employee is eligible or needs to provide more documentation.

New online Form I-9 smart form:

I-9 completion can be done with a paper form or with the [new I-9 smart form](#). It contains features such as drop-down menus, hover text with instructions, and error messages. You will still have to print the completed form for signatures and can then scan it for storage. The form responds when the employee chooses either U.S. citizen, lawful permanent resident, or alien authorized to work by altering the remaining questions to fit the chosen option. In cases where more than one translator or preparer assists the employee, the form will ask how many, and provide the necessary number of forms. The form indicates errors where information is entered incorrectly. A new field entitled “additional information” allows employees to provide details about the documentation they are using.

DACA and work authorization

A group of individuals brought to the United States as children without authorization to enter has been able to secure work authorization under the Deferred Action on Childhood Arrivals (DACA) issued during the Obama administration. DHS manages the program. This includes work authorization permits for eligible individuals. DACA work authorization is Form I-765, which can be used for I-9 verification. Employers should note expiration dates and inform holders that they must renew their permits in a timely manner when necessary. In addition, employers should be alert to changes in the program. A federal court declared DACA invalid but allowed DHS to process permits while an appeal is pending.

COVID-19 temporary I-9 completion rules

DHS recognizes that during the COVID-19 pandemic, infection control protocols mean fewer new hires will report in person. Instead, new hires may be assigned to work from home. To avoid infection, those new hires may complete their I-9 forms without personally presenting documents until December 31, 2021. If employees hired on or after April 1, 2021, work exclusively in a remote setting, they are temporarily exempt from the physical inspection requirements associated with the Employment Eligibility Verification (Form I-9). Documents can instead be inspected via email, fax, or video link. Employers must enter COVID-19 as the reason for the delay in Form I-9. Once normal operations resume, all employees who remotely verified their identity and work authorization must report physically to their employer within three business days for in-person verification.