



6-30-2010

Technical Bulletins: Revision to Employment Eligibility Verification Form I-9 (2010)

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Recommended Citation

Stokes, Richard, "Technical Bulletins: Revision to Employment Eligibility Verification Form I-9 (2010)" (2010). *MTAS Publications: Technical Bulletins*.
https://trace.tennessee.edu/utk_mtastech/30

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REVISION TO EMPLOYMENT ELIGIBILITY VERIFICATION FORM I-9

Richard L. Stokes, PHR, IPMA-CP, Municipal Human Resource Consultant

The U.S. Citizenship and Immigration Service (USCIS), formerly Immigration and Naturalization Services (INS), released a revised Employment Eligibility Verification Form I-9 on August 7, 2009. USCIS is responsible for the documentation of alien employment authorization, for Form I-9 itself, and for the E-Verify employment eligibility verification program. The revision basically removed several documents from the List of Acceptable Documents and added a new form.

The Immigration Reform and Control Act requires employers to verify the identity and employment eligibility of any person employed by the organization. The verification is done by an in-person inspection of the original document that shows an employee's identity and his/her eligibility to work in the United States. A record of the employer's verification is made on the Form I-9 for each person hired by the organization.

Now when employers complete the employee verifications, they must use the Form I-9 with a revision date of August 7, 2009 or February 2, 2009, for all employees hired on or after November 7, 2007, as well as for any existing employee who requires re-verification. You do not need to complete a Form I-9 for persons who are:

1. Hired before November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times;

2. Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;
3. Independent contractors; or
4. Providing labor to you who are employed by a contractor providing services (i.e. employee easing or temporary agencies).
5. Not physically working on U.S. soil.

Section 1 of the Form I-9 must be completed on or before the employee's first day of work. The employee should complete the section by filling in the correct information and signing and dating the form. You should ensure that the employee prints the information clearly. If the employee cannot complete Section 1 without assistance or if he/she needs Form I-9 translated, someone may assist him or her. The preparer or translator must then complete the Preparer/Translator Certification block on Form I-9.

Providing a Social Security number on form I-9 is voluntary for all employees unless you are an employer participating in the USCIS E-Verify Program, which requires an employee's Social Security number for employment eligibility verification. You may not ask an employee to provide a specific document with his or her Social Security number on it.

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Section 2 of the Form I-9 must be completed within three (3) days of the employee's actual start date. The employee must present to you an original document or documents that establish identity and employment authorization. Some documents establish both identity and employment authorization (List A documents). Other documents establish identity only (List B) or employment authorization (List C) only. The employee can choose which documents he or she wants to present.

You must examine the original document or documents the employee presents and then fully complete Section 2 of the Form I-9. You must examine one document from List A, or one from List B and List C. Record the title, issuing authority, number, and expiration date (if any); fill in the date of hire and correct information in the certification block; and sign and date the form. You must accept any document(s) from the List of Acceptable Documents presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them.

If you participate in the E-Verify Program, you may only accept List B documents that bear a photograph.

If a minor – a person under the age of 18 – cannot present a List A document or an identity document from List B, complete Form I-9 as follows:

1. A parent or legal guardian must complete Section 1 and write "Individual under age 18" in the space for the employee's signature.
2. The parent or legal guardian must complete the "Preparer/Translator Certification" block;
3. Write "Individual under age 18" in Section 2, under List B, and

4. The minor must present a List C document showing his/her employment authorization. Record the required information in the appropriate space in Section 2.

If a person with a disability, who is placed in a job by a non-profit organization, association, or as part of a rehabilitation program, cannot present a List A document or an identity document from List B, complete Form I-9 as follows:

1. A representative of the non-profit organization, a parent or a legal guardian must complete Section 1 and write "Special Placement" in the space for the employee's signature;
2. The representative, parent or legal guardian must complete the "Preparer/Translator Certification" block;
3. Write "Special Placement" in Section 2, under List B; and
4. The employee with a disability must present a List C document showing his/her employment authorization. Record the required information in the appropriate space in Section 2.

When you rehire an employee, you must ensure that he/she is still authorized to work. You may do this by completing a new Form I-9 or you may re-verify or update the original form by completing Section 3. If you rehire an employee who has previously completed a Form I-9, you may re-verify on the employee's original Form I-9 if:

1. You rehire the employee within three (3) years of the initial date of hire; and
2. The employee's previous grant of employment authorization has expired, but he/she is now eligible to work under a new grant of employment authorization; or
3. The employee is still eligible to work on the same basis as when Form I-9 was completed.

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To re-verify, you must:

1. Record the date of rehire;
2. Record the document title, number and expiration date (if any) of the document(s) the employee presented;
3. Sign and date Section 3; and
4. If you are re-verifying on a new Form I-9, write the employee's name in Section 1.

To update, you must:

1. Record the date of rehire and the employee's new name, if applicable;
2. Sign and date Section 3; and
3. If you are updating on a new Form I-9, write the employee's name in Section 1.

NOTE: You must complete a new Form I-9 if the version of the form you used for the previous verification is no longer valid.

The forms must be maintained until three years after the date of hire or one year after the date of termination, whichever is later. These forms can be retained in paper, microfilm, microfiche, or electronically.

Form I-9 can be signed and stored in paper format. A simply photocopy or printed I-9 form can help ensure that the employee received the instruction for completing the form. You may retain completed paper forms onsite, or at an off-site storage facility, for the required retention period, as long as you are able to present the Form within three days of an inspection request from DHS, OSC, or the U.S. Department of Labor.

Form I-9 may also be stored on microfilm or microfiche. To do so:

1. Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be 20 years or more.
2. Use well-maintained equipment to create and view microfilms and microfiche that provides clear viewing and can reproduce legible paper copies. DHS must have immediate access to clear, readable documents should they need to inspect your forms.
3. Place indexes either in the first frame of the first roll of film, or in the last frames of the last roll of film of a series.

USCIS provides a Portable Document Format fillable printable form I-9 from its Web site, www.uscis.gov. You may electronically generate and retain Form I-9 as long as:

1. The resulting form is legible;
2. No change is made to the name, content, or sequence of the data elements and instructions;
3. No additional data elements or language are inserted;
4. The employee receives Form I-9 instructions; and
5. The standards specified under 8 CFR 274a.2(e) are met.

To store your records electronically, you may complete or retain the forms in an electronic generation or storage system that includes:

1. Reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system.

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2. Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored record, including the electronic signature, if used.
3. An inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used.
4. A retrieval system that includes an indexing system that permits searches by any data element.
5. The ability to reproduce legible paper copies.

The section on photocopying and retaining Form I-9 now includes information about electronically signing and retaining I-9 forms. If you complete Form I-9 electronically using an electronic signature, your system for capturing electronic signatures must allow signatories to acknowledge that they read the attestation and attach the electronic signature to an electronically completed Form I-9.

In addition the system must:

1. Affix the electronic signature at the time of the transaction;
2. Create and preserve a record verifying the identity of the person producing the signature; and
3. Provide a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

NOTE: If you choose to use electronic signature to complete Form I-9, but do not comply with these standards, DHS will determine that you have not properly completed Form I-9, in violation of section 274(a)(1)(B) of the INA. (8 CFR Part 274a.2(f)(2))

The following documents establish both identity and employment authorization from List A of the “List of Acceptable Documents”:

- U.S. Passport or 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 (MRIV)
- Employment Authorization Document (Card) that contains a photograph (Form I-766)
- In the case of a non-immigrant 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 non-immigrant 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.
- 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 non-immigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

List B documents that establish identity for individuals 18 years of age or older and that must not be expired include:

- 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.

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- 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
- Driver's license issued by a Canadian government authority
- Identification Card for Use of Resident Citizen in the United States (Form I-179)
- Employment authorization document issued by Department of Homeland Security (other than those listed under List A)

A Copy of the revised form can be downloaded from the Web at <http://www.uscis.gov/files/form/i-9.pdf>. Revisions also have been made to the *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)*(Rev. 07/31/09)N. It also can be obtained online at <http://www.uscis.gov/files/form/m-274.pdf>.

For persons under age 18 who are unable to present a document listed above:

- School record or report card
- Clinic, doctor or hospital record
- Daycare or nursery school record

Documents from List C: Documents that establish employment authorization include:

- U.S. 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 United States [Note – A copy (such as a metal or plastic reproduction) is not acceptable.]
- Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545)
- Certification of Report of Birth issued by the U.S. Department of State (Form DS-1350)
- Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal
- Native American tribal document
- U.S. Citizen Identification Card (Form I-197)

The employer sanctions and anti-discrimination provision of the INA were added by the Immigration Reform and Control Act and prohibits four (4) types of unlawful conduct:

1. Citizenship or immigration status discrimination;
2. National origin discrimination;
3. Unfair documentary practices during Form I-9 process (document abuse); and
4. Retaliation

Discriminatory documentary practices related to verifying the employment authorization and identity of employees during Form I-9 process is called document abuse. Document abuse occurs when employers treat individuals differently on the basis of national origin or citizenship status in Form I-9 process. Document abuse can be categorized into four (4) types of conduct:

1. Improperly requesting that employees produce more documents than are required;
2. Improperly requesting that employees present a particular document;
3. Improperly rejecting documents that reasonably appear to be genuine and belong to the employee presenting them; and

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4. Improperly treating groups of applicants differently when completing Form I-9, such as requiring certain groups of employees who look or sound foreign to produce particular documents the employer does not require other employees to produce.

Citizenship or immigration status discrimination occurs when an employer treats employees differently based on their citizenship or immigration status in regard to hiring, firing, or recruitment or referral for a fee. An employer must treat all groups the same.

National origin discrimination occurs when an employer treats employees differently based on their national origin in regard to hiring, firing, or recruitment or referral for a fee. An employee's national origin relates to the employee's place of birth, country of origin, ancestry, native language, accent, or because he or she is perceived as looking or sounding foreign.

Retaliation occurs when an employer or other covered entity intimidates, threatens, coerces, or otherwise retaliates against an individual because the individual has filed an immigration-related employment discrimination charge or complaint; has testified or participates in any immigration-related employment discrimination investigation, proceedings, or hearing; or otherwise asserts his/her rights under the INA's anti-discrimination provisions.

The Office of Special Council for Immigration-Related Unfair Employment Practices, Civil Rights Division, Department of Justice (OSC), enforces the anti-discrimination provisions of the INA. Title VII of the Civil Rights Act of 1964 (Title VII),

as amended, also prohibits national origin discrimination, among other types of conduct. OSC and EEOC share jurisdiction over national origin discrimination charges. Generally, the EEOC has jurisdiction over larger employers with 15 or more employees, whereas OSC has jurisdiction over smaller employers with between 4 and 14 employees.

The Department of Homeland Security (DHS) may impose penalties if an investigation reveals that you knowingly hired or knowingly continued to employ an unauthorized alien, or failed to comply with the employment eligibility verification requirements with respect to employees hired after November 6, 1986. If DHS determines that you knowingly hired unauthorized aliens, continued to employ aliens knowing that they were not authorized or have become unauthorized to work in the United States, or practiced unlawful discrimination, you may be ordered to cease and desist from such activities and pay a civil penalty up to \$16,000 for each unauthorized alien and possible imprisonment. Failure to properly complete, retain, and/or make available for inspection Forms I-9 could result in a civil penalty in an amount not less than \$110 and not more than \$1,100 for each violation.

For more information about the USCIS Revised Employment Eligibility Verification Form I-9, contact Richard Stokes or Bonnie Curran, MTAS municipal human resources consultants, at (615) 532-6827 or your municipal management consultant in the Knoxville, Johnson City, Nashville, Jackson or Martin office.

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MTAS1491 • E14-1050-000-040-10