

Frequently Asked Questions About I-9 Compliance

What is required to verify work authorization?

The basic requirement to verify work authorization is the Form I-9. This form is available on the HR website: <http://www.fit.edu/hr/documents/Forms/i-9.pdf> The back of the form lists the types of documents that a new hire must provide to verify his or her identity and that he or she is authorized to work in the United States. The purpose of the I-9 form is to verify identity and authorization to work in the United States.

What are the current civil penalties?

- Violations of I-9 requirements: fines range from \$110 - \$1,100 per I-9.
- Knowingly hiring or continuing to employ: fines range from \$375 - \$3,200 per alien
- Pattern or practice: \$3,300 - \$11,000
- Debarment from government contracts for “knowingly employing an unauthorized worker”
- Criminal penalties: fines and/or imprisonment

What are the basic Form I-9 requirements?

- Employers must complete for every new hire after November 6, 1986.
- Employers may not knowingly hire or continue to employ a person who is not authorized to work in the United States. Knowingly means “actual knowledge” or “constructive knowledge.”
- Physical presence of the employee is required.
- Must see original documents, not copies. However will accept a certified copy of birth certificate.
- Attach photocopies of documents to I-9.

No exception for temporary or part-time employment.

Who should fill out Form I-9?

- Form I-9 must be completed for all new hires, including temporary or part-time employment
- Form I-9 must be completed for all employees working in the U.S., even if on payroll abroad
- Form I-9 is not required for independent contractors
- Form I-9 is not required for pre-11/07/86 hires (grandfathered employees)
- Form I-9 is not required for employees working outside the U.S. or outside its territories

How should Form I-9 be completed?

- Physical presence of employee is required (Someone has to see person and his/her documents)
- Must see original documents, not copies. However, will accept a certified copy of birth certificate.
- Attach photocopies of documents
- No exception for temporary or part-time employment

When must the Form I-9 be completed?

The Form I-9 must be completed within three business days of the date employment begins. If the new hire claims that the necessary documents were lost, stolen or destroyed, the person must provide a receipt for replacement documents within the three days. May not accept receipt for extension of employee authorization document. If an employee has presented a receipt for a replacement document, he or she must produce the actual document within 90 days of the date employment begins.

Is completion of an I-9 required for a person who is being rehired?

- No I-9 is needed if an employee is “continuing to be employed.” For example:
 - Leave of absence, disability, vacation, etc.
 - Promotion or demotion
 - Strike, temporarily laid off
 - Disciplinary suspension
 - Transfer between one distinct unit of employer to another
- I-9s may be reused if completed within 3 years of date of rehire (new I-9 recommended)

Is an I-9 needed for contractors and temporary agencies?

- No I-9 form is needed for true independent contractors
- If you contract with a temporary agency for personnel, follow the following guidelines:
 - Clearly identify the agency as the “employer”
 - Indicate the agency will comply with State and Federal requirements including, but not limited to, proper I-9 completion and maintenance
 - Include an indemnification clause
- Entering into a contract with “knowledge” of unlawful status can remove the independent contractor protection

Re-verification will be conducted by the Office of Human Resources.

What are an employer’s retention obligations?

- Employer must have a Form I-9 for every current employee (unless they were hired prior to November 7, 1986)
- Employer cannot destroy I-9 for current employee
- Following employee’s termination, employer must retain I-9 for the later of:
 - 3 years after the person began work:
 - OR
 - 1 year after the person departs the company
- Ideally centralize I-9 storage in one location
- Keep separate from immigration (including PAFs) and personnel files

What are basic Form I-9 discrimination violations?

- Document Abuse

- Occurs when certain employees or applicants are subject to more stringent verification measures than necessary to verify that they are eligible to work in the United States
- Citizenship Status Discrimination
 - Occurs when individuals are not hired or are fired because of their real or perceived immigration or citizenship status, or because of their type of work authorization
- National Origin Discrimination
 - Employer treats an employee or applicant differently during the hiring and firing process because of his or her place of birth, country of origin, ancestry, native language, accent or because the individual is perceived as looking or sounding foreign
- Retaliation
 - Example: employee terminated for filing complaint

What is document abuse?

- May not ask for more or different documents
- May not refuse to accept valid documents presented
- Should not specify which documents will be acceptable

Who is in the I-9 “protected class?”

- U.S. citizens or nationals
- Permanent residents
- Refugees
- Asylees
- Temporary residents under the legalization program (Special agricultural worker or amnesty applicant under 1986 law)

Who is not in the I-9 “Protected Class?”

- Non-immigrants such as:
 - F-1
 - J-1
 - H-1
- Asylum applicants
- Illegal aliens

How should an I-9 be completed?

- SECTION 1 must be completed by employee on, or before, the first day of hire. Ensure that employee checks box, signs and dates the form.
- SECTION 2 must be completed within three business days of the date employment begins.
- SECTION 3 must be completed on, or before, temporary employment authorization expires.

TIPS for SECTION 1:

- SECTION 1 must be completed by employee on or before first day of hire.
- Ensure that employee checks box, and signs and dates the form.
- If employee checks Box 2 (new form Box 3), A # must be entered.
- If employee checks Box 3 (new form Box 4), expiration date and A # or I-94 must be entered.

Most common errors in SECTION 1:

1. Name in wrong order
2. Address incomplete
3. Social security number field blank (required for employees working on contract with FAR E-Verify clause.)
4. Attestation box not checked or is incomplete
5. Signature missing
6. Date missing
7. Date of birth instead of current date

TIPS for SECTION 2:

- SECTION 2 must be completed by company representative within 3 business days of hire
- Verification of **IDENTITY** and **WORK AUTHORIZATION**
- Company representative must review **ORIGINAL DOCUMENTS**
- Attach copies of presented documents to the I-9

Most common errors in SECTION 2:

1. Columns A, B, or C left blank with copies attached
2. Column B & C documents reversed
3. Document number missing
4. Document expiration date missing
5. Date of hire missing
6. Certification not signed

Most common errors in SECTION 3:

1. Re-verification not completed in a timely manner
2. Document provided was not acceptable or inadequately described
3. Over-documentation (do not re-verify identity)
4. Employer signature or date missing

Document TIPS

- U.S. passport CANNOT be expired (effective April 3, 2009 all documents must be valid at time of presentation)
- Foreign passport must be unexpired
- ID card must be issued by a federal/state/local government agency. (School IDs acceptable for students/minors)
- Voter's registration card need not have photo to confirm identity. For E-Verify candidates, a photo ID is required.
- Social security card not acceptable for work authorization if it contains notations "Not Valid for Employment." Social security card will NEVER say "Valid for Employment."
- Birth certificate must be issued by state or local government authority. (Not church, not hospital.)

Why must United States citizens fill out the Form I-9?

The Form I-9 is designed to determine who is authorized to work in the United States. Its purpose is not to determine who is and who is not a citizen. While all citizens are authorized to work here, it is not always easy to recognize who is and is not a citizen because of the diverse heritage of our country. Employers must do an I-9 form for every employee, not just those who appear to be non-citizens.

Do I need to complete a Form I-9 for everyone who applies for a job with my company?

No. You need to complete Form I-9 only for people you actually hire. For purposes of the I-9 rules, a person is “hired” when he or she begins to work for you for wages or other compensation.

Can I terminate an employee who fails to produce the required documents within three business days?

Yes. You may terminate an employee who fails to produce the required documents, or a receipt for replacement documents (in the case of lost, stolen or destroyed documents), within three business days of the date employment begins. However, you must apply these practices uniformly to all employees and not just to those who do not appear to be citizens.

What are the legally acceptable documents that a new hire can show for I-9 purposes?

The employer is required to verify both identity and authorization to work in the United States. The back of the I-9 Form describes which documents establish a new hire’s identity and work authorization.

- Documents listed in List A establish both identity and authorization to work in the United States
- List B documents only establish identity
- List C documents only establish employment eligibility, meaning the person is authorized to work in the United States.

Can I refuse to hire a person who does not have a U.S. birth certificate or a Green Card but has other papers?

The employer must look at the other document papers to determine whether they prove identity and work authorization. An employer cannot require that the new hire provide specific documents, such as a U.S. birth certificate or a Green Card. A new hire may show any of the documents listed on the I-9 form. The documents shown in List A on the back of the I-9 Form prove both identity and authorization to work. If a new hire provides a document in List A, only one document is needed. If the document provided is not in List A, the employee must provide a document from List B and a document from List C.

If I believe a new hire is an alien, can I ask the person to produce a Green Card when filling out the I-9 Form?

No. Employers cannot specify which document or documents are acceptable from an employee. If the person provides a document from List A, or a document from List B and a document from List C, the employer may not request any other document to verify employment eligibility.

When filling out the I-9 Form, can I accept a social security card from an alien as proof of work authorization?

Yes, so long as the social security card does not state “NOT VALID FOR EMPLOYMENT” or “VALID FOR WORK ONLY WITH INS AUTHORIZATION.”

NO ONE WORKS UNTIL THE I-9 and W-4 FORMS ARE COMPLETED!!!

✓ Form I-9 Checklist

SECTION 1. Employee Information and Verification: To be completed on the first day of work. Earlier is acceptable, but the form cannot be completed before the employee has been hired.

- Give the employee a Form I-9 (all pages including instructions). Ask him/her to complete Section 1 and bring an acceptable combination of documents to you no later than their third work day. NOTE: Let the employee choose the documents! Never request specific documents.
- Check that the employee has completed all fields:
 - ✓ Name: The employee must use his/her legal name in correct order
 - ✓ Address, date of birth, social security number
 - ✓ Citizenship Attestation
 - a. A lawful permanent resident must provide an 8- or 9- digit Alien Number
 - b. An Alien Authorized to work must provide the date work authorization expires and an Alien number or an 11-digit admission number from the form I-94.
 - ✓ Sign and Date: The form is not valid without a signature
- Preparer and/or Translator Certification: If someone other than the employee completed Section 1.

SECTION 2. Employer Review and Verification: To be completed no later than the employee's third day of work by an authorized representative of the hiring department. (Contact your supervisor or HR contact in your department to find out if you are authorized to sign this section.)

- Accept the first valid document or combination of documents presented. Accept only originals and do not ask for or accept more than is required.
 - ✓ Valid documentation is one of the following: Once document from List A, OR one from List B AND one from List C.
 - ✓ Be sure the employee has signed the documents
 - ✓ Note that Foreign Passport with an I-94 Arrival/Departure Record requires an additional work authorization document, such as I-20 or DS-2019.
 - ✓ Make a readable copy of each document.
- Record each document title, issuing authority, document number, and expiration date (if applicable). Use the correct lines according to the key at the far left of the page. Be sure to use the correct column for List A, B, or C.
- Enter the employment begin date (month/day/year). Use the current date, if you are completing the form before the actual first day of work. Do not leave this space blank!

SECTION 3. Updating and Re-verification: Only use this section when the employee's work authorization has changed or has a new expiration date.

Handling the Completed I-9:

- Forward the original I-9 with all supporting documents to the Office of Human Resources.