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## How to Conduct an I-9 Audit

The [Immigration Reform and Control Act of 1986](#) (IRCA) was established to prevent individuals who are not eligible to work in the United States from performing work by requiring employers to complete an I-9 form on each employee within three days of hire.

Employers can demonstrate compliance by following the I-9 verification requirements and treating all new hires the same. This includes the following steps:

- **Establish a policy of hiring only individuals who are authorized to work in the United States.** A “U.S. citizens only” hiring policy is illegal. An employer may require U.S. citizenship for a particular job *only* if it is required by federal, state or local law, or by government contract.
- **Complete the I-9 form for all new hires.** This form establishes that individuals hired are authorized to work in the United States.
- **Permit employees to present any document or combination of documents acceptable by law.** Employers *cannot* prefer one document over others for purposes of completing the I-9 form. Authorized aliens do not carry the same documents. For example, not all aliens who are authorized to work are issued “green cards.” As long as the documents are allowed according to the list of acceptable documents on the most current I-9 form and appear to be genuine and issued to the person presenting them, they should be accepted. To not accept certain documents is illegal. Acceptable documents are listed on the reverse side of the I-9 form.

**It is important for employers to ensure that all of their I-9s are properly completed and in order. Below is a step-by-step process on how to audit your I-9 forms.**

### **Step 1: Gather all I-9s on file.**

Check to see that there is an I-9 on file for every current employee who performs work for your company in the US. Keep a list of current employees for whom you do not have an I-9.

You should not have an I-9 for non-employees who may perform work for you such as volunteers, independent contractors, or consultants. If you have I-9s for these individuals, they should be removed from your official I-9 file.

Make two files of I-9s as follows:

1. I-9s (electronic or paper) for current employees.
2. I-9s (electronic or paper) for terminated employees.



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Each of these I-9s will be handled separately and in priority order. Current employees who have no I-9 on file are the highest priority, as you will want to verify their eligibility to work in the United States as quickly as possible. The next highest priority will be to review current employees' I-9s on file to ensure they have been completed properly. The lowest priority will be handling I-9s of terminated employees.

### **Step 2: Obtain I-9s for current employees who are missing I-9s.**

Determine if any current employees for whom you have no I-9s were hired before November 6, 1986. Any employees hired before this date are not required to have an I-9. If you have employees hired before this date, remove them from your list.

Next, contact each employee hired after November 6, 1986, for whom you do not have an I-9 and ask him or her to bring you document(s) from List A or Lists B and C of [the I-9 form](#).

Your communication with the employee should be apologetic but firm. Apologize that for whatever reason this documentation was lost or not collected at the beginning of employment. However, be firm in explaining that this is something that must be completed under federal law and the employee will not be able to continue working for you if he or she cannot provide these documents. Communicating to each employee individually on this matter is better than communicating to a group of employees. Verbal communication with the employee is sufficient; however, you also may send an email or a memo to him or her. Keep copies of all communications sent to employees missing I-9s in the I-9 audit file.

Establish a deadline for employees to provide documentation. It is suggested to require that the employee to bring the items with him or her the next day he or she works. If he or she has the necessary documentation on hand, complete the I-9 immediately.

As employees begin to provide documentation, sit down with them and complete the I-9s. You must view the originals (not copies) of their documents. Current dates should be used when completing the I-9 form. The date of hire is the employee's actual date of hire, which may have been years earlier. You will want to write a short memo to attach to the I-9 explaining that when the audit was performed, there was no I-9 on file and the employee completed the I-9 at the time of the audit. This will demonstrate that the employer is making a good faith effort to be in compliance.

Cross the employee's name off the audit list. Add the completed I-9 to your file of I-9s for current employees.



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Some employees may not be able to find their documents. The Handbook for Employers indicates that certain receipts for documents are acceptable for 90 days after hire. Therefore, if your audit finds missing I-9s for current employees who have worked more than 90 days, you will want to consult with your attorney to determine whether or not receipts for documents should be allowed, and for how long.

For an employee who does not provide the required documents within the appropriate time frame, you either terminate his or her employment or put him or her on a leave of absence. Inform the employee that he or she may be able to continue work for you once he or she provides proof of eligibility to work in the United States if that is the intention of your organization.

### **Step 3: Audit I-9s of Current Employees.**

This is the most grueling part of the I-9 auditing process. There are a number of items that must be completed properly to ensure compliance. Thankfully, the USCIS has published a thorough guide on I-9 compliance, Handbook for Employers: Instructions for Completing the Form I-9. Anyone conducting an I-9 audit should keep this guide handy as it answers many questions regarding the proper completion of the form I-9.

Please also keep in mind that technical errors may be corrected on the I-9 form but substantive errors may require completing a new I-9. For further information about technical versus substantive errors see this article about [Correcting I-9s](#).

Lastly, it is important to clearly show it is a correction; using a different colored ink and ensuring changes are initialed and dated with the current date will help make this clear.

Employers need to check the following information in each section of the I-9:

#### **Section 1.**

1. Ensure name, address, maiden name and date of birth are completed.
2. For the current I-9 form, the Social Security number is voluntary except for employers who participate in the E-verify program.
3. Ensure the employee has identified his or her immigration status and has signed and dated the form.
4. The preparer or translator section is only to be completed if someone other than the employee completed section 1 on behalf of the employee.



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### Section 2.

1. Ensure that the proper document has been entered into the proper list. For example, ensure that a List B item is in fact listed under List B and not List C or List A.
2. Ensure that all the required information is entered for each document.
3. Ensure that the documents included satisfy the requirement to not only provide proof of identity, but also to provide proof of eligibility to work in the U.S.
4. Ensure that the certification has been completed and a representative of the company has signed and dated the form.

### Section 3.

1. This section should be completed only if the employee's work authorization expired or if the employee has been rehired. It can also be completed if the employee had a name change, but this is not required. In most cases, section 3 will be blank.
2. Please note: expired permanent resident cards and List B documents from the I-9 do not need to be re-verified.

As you begin to go through this process, separate the I-9s into two files. The first file contains I-9s that have been completed properly. These should be filed away. The second file contains I-9s that have errors. Step 4 discusses how to fix these errors.

### Step 4: Correcting Errors.

Start by making a list of the I-9s you have that contain errors. This will become your audit log that will show you are making a good faith effort to ensure your I-9 compliance. The log should contain three columns: employee's name, the error(s) and what actions were taken to rectify the error. For now, you will populate the first two columns of your log: employee name and the error found.

As you work through each incorrect I-9, use the Handbook for Employers: Instructions for Completing the Form I-9 to help you determine how to correct each error. Per the handbook: "The best way to correct Form I-9 is to line through the portions of the form that contain incorrect information, then enter the correct information. Initial and date your correction. If you have previously made changes on Forms I-9 in White-Out instead, USCIS recommends that you attach a note to the corrected Forms I-9 explaining what happened. Be sure to sign and date the note".

While the Handbook does not explicitly discuss how to handle the correction of specific errors, it does explain what the requirements are in completing the form and what identification documents are acceptable. Below is a table that lists common I-9 mistakes and tips for correcting those mistakes.



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### Common Error

#### Tip for Correction

Required information is left blank (i.e., name, address, signature, etc.).

In section 1, have the employee complete the blank field(s) and initial and date with current date. If documents or a signature is missing in section 2, complete a new I-9; if just the hire date is missing, correct and initial and date the change. If document or signature is missing in section 3 (when required), complete new I-9.

Documents for section 2 written in wrong columns.

Strike through the incorrect information and write the corrected information. Initial and date (current date) the correction. Do NOT use white out or black marker—the original wording should be readable.

The I-9 is so flawed, it does not make sense (i.e., copies of documents do not match those listed on the form).

Complete a new I-9, using the current date.

Section 3 is not complete.

For many employees, this section will be blank. This section only needs to be completed during re-verification when an employee's work authorization expires or you rehire an employee and under current guidelines the employee meets the conditions to be able to use the original I-9 form.

In some instances, there may be so many errors that using the original I-9 form would be prohibitive. In those instances, have the employee complete and sign a new I-9 form using the current date (but enter correct hire date in Section 2). The employer must verify employee's employment eligibility documents in section 2. The original form should be stapled to the new I-9. And, again, write a memo explaining why there are two I-9 forms and attach to the I-9s.

Many employers choose to attach copies of identification documents to the I-9 form. Information from the Handbook for Employers: Instructions for Completing the Form I-9 about this states:

*If you participate in E-Verify and the employee presents a document used as part of Photo Matching, currently the U.S. passport and passport card, Permanent Resident Card (Form I-551) and the Employment Authorization Document (Form I-766), you must retain a photocopy of*



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*the document he or she presents. Other documents may be added to Photo Matching in the future. If you do not participate in E-Verify, you are not required to make photocopies of documents. However, if you wish to make photocopies of documents other than those used in E-Verify, you must do so for all employees. Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of Form I-9, nor is it an acceptable substitute for proper completion of Form I-9 in general.*

If your intent has been and will continue to be the practice of photocopying employment authorization and identity documents used for I-9s, and you are missing photocopies of some of these documents, you will want to ask employees for copies of those documents now. Attach the copies to the I-9 and write a memo clearly indicating that you did an I-9 audit, the photocopy of the document was missing and you obtained the copy during the audit process; include the current date and attach the memo to the I-9.

If your intent in the past was to obtain copies of employment authorization and identity documents, but you are changing this process for the future and not planning to photocopy moving forward, then you should write a memo to the I-9 audit file explaining that you conducted an I-9 audit and found the discrepancy that some I-9s prior to the audit date have photocopies and some do not. Explain in the memo that your company has made a business decision to not keep photocopies of any of the I-9 employment authorization or identity documents in the future. This will show a good faith effort that you recognize the error in having copies of some I-9 authorization documents and not others and explain why there won't be any copies after the audit date. It is not recommended that you discard any copies of employment authorization or identity documents from the past until the regular retention period for the I-9 has expired or after consulting with your attorney.

As you correct each I-9, add the correction to your I-9 log.

### **Step 5: Terminated Employee I-9s.**

Once an employee is terminated from employment, employers are required to retain I-9s for three years after the employee's date of hire or for one year following his or her date of termination, *whichever date is later*. To determine which I-9s you should retain, see the how-to guide on [How to Retain and File I-9 Forms](#).

You may destroy all I-9s of terminated employees that are past their retention period. This leaves only the I-9s that you are required to still retain. Use the process similar to step 4 to correct any errors you find on these I-9 forms. You will be unable to correct any errors that require the ex-employee's input (i.e., missing documentation, missing signature, etc.). All corrections and instances where you were unable to make corrections should be noted on your I-9 audit log and on a memo attached to the I-9 form.



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### **Step 6: Completing the Audit.**

As corrections are made and missing I-9s begin to come in, your task will be to organize the I-9s and document clearly the steps you took during the audit. The guide on How to Retain and File I-9 Forms offers excellent guidance on how to organize your I-9 file. You may wish to print this procedure to document the process you followed during the audit process. Additional documentation to retain would be your I-9 audit log and communications to employees regarding the I-9 audit process. You may wish to keep the audit documentation in a separate I-9 audit file or to place this documentation in your file with the I-9s themselves.

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