

# 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. The act requires employers to complete an **I-9 form** for 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:

- **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. As long as the documents are unexpired, allowed according to the list of acceptable documents on the most current Form I-9, and appear to be genuine and issued to the person presenting them, they should be accepted. Acceptable documents are listed at the end of the Form I-9.
- **Update and reverify I-9s as needed.** See [How to Update or Reverify I-9 Forms](#).

Employers must ensure that all of their I-9s are properly completed and in order. Below is a step-by-step process on how to audit I-9 forms.

## Step 1: Gather All I-9 Forms on File

Employers must check to see that there is a Form I-9 on file for every current employee who performs work for the employer in the United States. Employers should keep a list of current employees for whom they do not have a Form I-9.

Employers should not have an I-9 for nonemployees who may perform work, such as volunteers, independent contractors or consultants. If an employer does have an I-9 for these individuals, it should be removed from the employer's official Form I-9 file.

Employers should have two files of I-9s:

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

Each of these I-9s will be handled separately and in priority order. Current employees who have no Form I-9 on file are the highest priority, as their eligibility to work in the United States should be verified as quickly as possible. The next highest priority will be

to review current employees' Forms I-9 on file to ensure they have been completed properly. The lowest priority will be handling I-9s of terminated employees.

## **Step 2: Obtain Forms I-9 for Current Employees Who Are Missing I-9s**

Generally, any employee hired before Nov. 6, 1986, and still employed with the company is not required to have an I-9 form. However, all employees hired on or after this date and who do not have an I-9 on file will need to be contacted and instructed to bring documentation from List A or Lists B and C of [Form I-9](#).

Communication with the employees should be apologetic but firm. Employers should apologize that for whatever reason this documentation was lost or not collected at the beginning of employment. They should explain that the form must be completed under federal law and that the employee will not be able to continue working for the organization if he or she cannot provide these documents. Communicating with each employee individually on this matter is better than communicating to a group of employees. Verbal communication with the employee is sufficient; however, employers may also send an e-mail or a memo to the employee. Copies of all communications sent to employees who are missing I-9s should be kept in the Form I-9 audit file.

Organizations should establish a due date for employees to provide documentation. Requiring that the employee bring the items with him or her the next day he or she works is suggested. If employees have the necessary documentation on hand, the employer should sit down with them and complete the Form I-9 immediately. Employers must view the originals (not copies) of their documents. Current dates should be used when completing the Form I-9. The date of hire is the employee's actual date of hire, which may have been years earlier. Employers should attach a short memo to the corrected Form I-9 explaining that there was no I-9 on file and that 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.

The employee's name can be crossed off the audit list, and the employer can add the completed I-9 to its file of Forms I-9 for current employees.

Some employees may not be able to find their documents. The United States Citizenship and Immigration Services (USCIS) *Handbook for Employers* indicates that certain receipts may be acceptable for a specific period of time in lieu of the actual document. Generally, a receipt for a lost, stolen or damaged document may be acceptable for 90 days. There are also document receipts that may be presented for refugees and lawful permanent residents. Receipts that fall outside of the requirements established by USCIS may not be an acceptable replacement for a List A, List B or List C document.

If an employee does not provide the required documents within the appropriate time frame, the employer should either terminate his or her employment or place the employee on a leave of absence. The employee should be informed that he or she may be able to continue work for the organization once he or she provides proof of eligibility to work in the United States, if that is the intention of the organization.

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

This step is the most grueling part of the I-9 auditing process. A number of items must be properly completed to ensure compliance. In addition to the USCIS *Handbook for Employers*, USCIS also has a section on its website titled [I-9 Central](#), which provides additional information on the entire I-9 process. Anyone conducting an I-9 audit should keep these resources handy as they answer many questions regarding the proper completion of the Form I-9.

Technical errors may be corrected on the existing I-9 form, but substantive errors may require completing a new I-9. For further information about technical versus substantive errors, see this USCIS resource on [correcting Form I-9](#).

Lastly, employers should clearly show a change is a correction; using a differently colored ink and ensuring changes are initialed and dated with the current date will help make this clear.

As employers begin to go through this process, they should 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.

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

#### **Section 1**

1. The name, address, other names used and date of birth must be completed.
2. For the current Form I-9, the Social Security number is voluntary except for employers that participate in the E-verify program.
3. The employee must identify his or her immigration status and sign and date the form.
4. The preparer or translator section is to be completed only if someone other than the employee completed Section 1 on behalf of the employee.

#### **Section 2**

1. The proper document must be entered into the appropriate column. For example, employers must ensure that a List B document is in fact listed under List B and not under List C or List A.

2. All required information must be entered for each document.
3. The documents listed must satisfy the requirement to provide both proof of identity and proof of eligibility to work in the U.S.
4. The certification section must be completed, and a representative of the company must sign and date 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. Expired permanent resident cards and List B documents from the Form I-9 do not need to be reverified. These documents must not be expired when the I-9 is initially completed, but their subsequent expiration does not trigger the requirement to reverify the I-9.

### **Step 4: Correct Errors**

Employers should start the step by making a list of the I-9 forms that contain errors. This will become the audit log showing the employer is making a good faith effort to ensure Form I-9 compliance. The log should contain three columns: employee's name, the error(s) and the actions that were taken to rectify the error. For now, the employer will populate the first two columns of the log: employee name and the error found.

As employers work through each incorrect I-9, they can use the USCIS *Handbook for Employers* to help them determine how to correct each error. According to 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." Although 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 Form I-9 mistakes and tips for correcting those mistakes.

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#### **Common Error**

#### **Tip for Correction**

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

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

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Documents for Section 2 are written in wrong columns.

The employer should either strike through the incorrect information and write the corrected information and then initial and date (current date) the correction; or draw arrows from the information to the correct column heading, and initial and date. Correction fluid or black marker may not be used—the original wording should be readable.

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

A new Form I-9 should be completed, using the current date.

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Section 3 is not complete.

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

In some instances, there may be so many errors that using the original I-9 would be prohibitive. In those instances, the employee should complete and sign a new I-9 using the current date (but the correct hire date should be entered 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. Again, the employer should write a memo explaining why there are two I-9 forms and attach it to the I-9s.

Although not required, some employers choose to attach copies of the identification documents to the Form I-9. Aside from the E-Verify requirements to retain photocopies,

an employer voluntarily choosing to retain photocopies must ensure that photocopies are kept for all employees. Information from the USCIS *Handbook for Employers* 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 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 the employer's intent has been and will continue to be the practice of photocopying employment authorization and identity documents used for I-9s, and the employer is missing photocopies of some of these documents, the employer should ask employees for copies of those documents now. The employer should attach the copies to the I-9 and write a memo clearly indicating that it performed a Form I-9 audit, that the photocopy of the document was missing and that the employer obtained the copy during the audit process. The current date should be included, and the memo should be attached to the Form I-9.

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

As the employer corrects each I-9 form, it should add the correction to its Form I-9 log.

### **Step 5: Terminated Employee I-9 Forms**

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 the correct Form I-9 retention period for terminated employees, see Step 5 of the [How to Retain and File I-9 Forms](#) guide.

Employers should use a process similar to the one outlined in Step 4 to correct any errors they find on I-9s retained for terminated employees. Employers will be unable to correct any errors that require the former employee's input (e.g., missing documentation, missing signature). All corrections and instances in which the employer was unable to make corrections should be noted on the Form I-9 audit log and on a memo attached to the I-9.

### **Step 6: Complete the Audit**

As corrections are made and missing I-9s begin to come in, an employer's task will be to organize the I-9s and clearly document the steps it took during the audit. Employers can refer to the guide on how to retain and file Forms I-9 for additional guidance on how to organize their I-9 files. Employers may wish to print this procedure to document the process they followed during the audit process. Employers should also retain the Form I-9 audit logs and communications to employees regarding the I-9 audit process. Employers may wish to keep the audit documentation in a separate Form I-9 audit file or to place this documentation in their files with the I-9 forms themselves.