



## Compliance Overview: I-9 Do's and Don'ts

### Form I-9 Overview

The Immigration Reform and Control Act (IRCA), which took effect in 1986, requires employers to hire and retain only individuals authorized to work in the United States. To enforce these guidelines, a Form I-9 is required by the U.S. Department of Homeland Security and it must be completed each time you hire someone to perform work in the U.S. in return for wages or other remuneration. It establishes an employee's identity and proves that they are eligible to work in the U.S. Both employees and employers (or authorized representatives of the employer) must complete certain parts of the form.

Form I-9 has three sections — the first is completed by the employee, the second is completed by the employer, and the third is completed only when rehire, reverification, or name changes apply.

Employers must complete and sign Section 2 of Form I-9, Employment Eligibility Verification, within three business days of the date of hire of their employee (the hire date means the first day of work for pay). For example, if your employee began work for pay on Monday, you must complete Section 2 by Thursday of that week. If the job lasts less than three days, you must complete Section 2 no later than the first day of work for pay.

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## Penalties

An employer is required to maintain Form I-9 in an accurate, reliable manner, and with integrity, so that no one makes changes to the form without proper authorization. This applies for both electronic and paper storage. Recently, U.S. Immigration and Customs Enforcement (ICE) has greatly increased workplace investigations, exposing more employers to penalties for noncompliance and making it more important than ever to take compliance seriously. Monetary penalties for knowingly hiring and continuing to employ violations range from \$573 to \$20,130 per violation, with repeat offenders receiving penalties at the higher end. Penalties for substantive violations, which include failing to produce a Form I-9, range from \$230 to \$2,292 per violation. I-9 compliance is imperative, and your procedures need to be consistent and complete. You can find more information in the employer [handbook](#) issued by United States Citizenship and Immigration Services (USCIS), available at the [USCIS website](#).

It is important to conduct internal audits regularly to ensure your business is complying with the law. You may also want to consider outsourcing to HR Knowledge to review your procedures and forms so you can be as prepared as possible in the event of an audit.

## Retaining Form I-9

Once Form I-9 is completed, employers are required to keep the form on file for at least **three years** from the date of hire for current employees, and at least **one year** after the individual leaves the company, whichever is later. Store hard copies in alphabetical order in a folder specifically marked for Forms I-9, or store soft copies in an electronic folder. Should an authorized official of the USCIS, the Department of Labor (DOL), or the Office of Special Counsel for Immigration-Related Unfair Labor Practices request copies of the forms for any reason, you must have original forms available on location **within three days** of the request.

Employers should set up a reminder system to ensure that they do not forget to obtain documentation and complete Form I-9 for all new hires. The reminder system should also help employers with reverification obligations when employee documents certifying work authorization have an expiration date. In these cases, employers must reverify the employee's eligibility before the authorization's expiration date. This requirement does not apply to Permanent Residency Cards (green cards), U.S. citizenship documents, or any document from List B.

Employers need to have a mechanism in place to determine record retention dates for **terminated** employees. Remember to only shred those forms for terminated employees you have determined have passed the record retention requirements using our calculator below.

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Never remove or shred Form I-9s for current employees.

I-9 Retention Calculator:

Enter date employee started work:	Click or tap to enter a date.
Add 3 years to Line 1:	A. Click or tap here to enter text.
Termination date:	Click or tap to enter a date.
Add 1 year to Line 2:	B. Click or tap here to enter text.
Which date is later: A or B? Enter later date here:	C. Click or tap here to enter text.
<i>Store Form I-9 until this date</i>	

For example: John Doe is hired on 5/14/15 and terminated on 2/9/20. Using the calculation above, we will determine how long to keep John Doe's Form I-9 on file.

1. Date John Doe began work for pay: 5/14/15
  - a. Add three years to the date of hire: 5/14/18
2. The date John Doe's employment was terminated: 2/9/20
  - b. Add one year to the date of John Doe's termination: 2/9/21
3. Which date is later, A or B? Date B is later.
  - c. Enter the later date: 2/9/21

The retention date should read "Retain until 2/9/21"

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## I-9 Do's and Don'ts

Employers should regularly review their I-9 practices to ensure adherence with the law. To assist employers, HR Knowledge has put together a list of I-9 Do's and Don'ts.

DO'S	DON'TS
<p>✓ Have the employee complete Section 1 no later than the first day of work. The employer must complete Section 2 no later than the third day of work.</p>	<p>✗ Don't ask an applicant to complete an I-9 prior to making a job offer. If the applicant is not hired, they may claim national origin or race discrimination.</p>
<p>✓ Do provide the full and current Form I-9 to a new hire. This includes the page with the list of acceptable documents.</p>	<p>✗ Don't provide just the first page to a new hire. Don't pre-fill out any of the information on either Section 1 or Section 2.</p>
<p>✓ Examine either one original document from List A or one original document from both List B and List C for each employee.</p>	<p>✗ Don't ask new hires for any particular documents or for more documents than the I-9 requires. The employee may provide any acceptable documentation in accordance with the provided list of Acceptable Documents.</p>
<p>✓ Consider an electronic I-9 system that will uniformly establish procedures for obtaining the I-9s, storing them, and reverifying eligibility when needed. <b>Ask HRK to see a demo of our cloud-based I-9 solution.</b></p>	<p>✗ Don't allow an employee to work until they have completed Section 1 <b>OR</b> allow an employee to work beyond the third day of services until they have provided the appropriate documentation and the employer has reviewed and signed Section 2.</p>
<p>✓ Do keep a tickler file to follow up on expiring documents that limit the employee's authorization to work.</p>	<p>✗ Don't accept photocopies or expired documents. An employee must provide the <b>original</b> non-expired documents.</p>
<p>✓ Retain I-9s for all active employees indefinitely; retain I-9s for terminated employees for three years after the date of hire or for one year after employment is terminated, whichever is later. <b>(See our Retention Calculator on Page 3.)</b></p>	<p>✗ Don't put the I-9 Form in an employee's personnel file. To protect against discrimination claims, keep the I-9 and supporting documents in a separate file.</p>
<p>✓ Keep the I-9s in a separate file, not in the employee's personnel file.</p>	<p>✗ Don't confuse E-Verify and the Form I-9. It is important to remember that participating in E-Verify does not absolve the employer of its responsibility to complete and retain an I-9 form for each newly hired employee.</p>
<p>✓ Write down documents in the correct columns in Section 2. For example, a passport may only be documented on List A, a driver's license may only be documented on List B, and a social security card may only be documented on List C.</p>	<p>✗ Don't accept more than the minimum documentation for Section 2. For example, if an employee presents a passport, a driver's license, and a social security card, you may only record the passport <b>or</b> the driver's license and social security card — not all three. The practice of accepting more than the required documentation may be considered discriminatory.</p>

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