

IMMIGRATION REFORM AND CONTROL ACT (I-9)

REFERENCES	SECTIONS
Human Resources Memorandum http://www.dgs.ca.gov/ohr/Home/HRPolicyMemos.aspx	08-018, 08-002, 99-008
Law & Regulation http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=f3829c7755cb9010VgnVCM10000045f3d6a1RCRD	US Government: Public Law 82-414-Immigration and Nationality Act,
Personnel Management Policy and Procedures Manual (PMPPM)	370.3
Responsible Control Agency and Program http://www.uscis.gov	U.S. Department of Homeland Security-Bureau of Citizenship and Immigration Services
Other	
U.S. Handbook for Employers http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a2e29c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=a2e29c7755cb9010VgnVCM10000045f3d6a1RCRD	

Immigration Reform and Control Act (I-9)

Policy The DGS is responsible for completion and retention of Form I-9 for each individual it hires for employment. This includes citizens and non-citizens. On the form, the DGS must verify the employment eligibility and identity documents presented by the employee and record the document information on the Form I-9. Acceptable documents are listed on the back of the form.

**Definition/
Explanation** The Employment Eligibility Verification (I-9) form is used to verify the employment eligibility of all persons hired on or after, November 7, 1986. The DGS should hire only United States citizens or aliens who are authorized to work in the United States.

Non-citizens who are authorized to work in the United States may be employed in all classifications except peace officer classifications. (See section on Citizenship in this manual).

**The I-9
process**

General

The DGS is responsible for the completion and retention of Forms I-9 for all employees, regardless of citizenship or national origin, hired for employment in the United States. An employee is any individual compensated for services or labor by an employer, whether by payment in the form of wages or other remuneration (such as goods or services such as food and lodging).

For whom is a Form I-9 unnecessary?

- Employees hired before, November 7, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times
 - Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis
 - Independent contractors
 - Providing labor to employees who are employed by a contractor providing contract services (e.g., employee leasing or temporary agencies)
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The I-9 process (continued)

Note:

- The DGS is not permitted under the law to contract for the labor of an individual whom it knows is not authorized for employment. Employers who violate this prohibition may be subject to civil and criminal penalties.
 - Employers are not permitted to request more or different documents than are required or to refuse to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual presenting the document.
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Retention of I-9 records

The DGS must retain the I-9 form of each employee **either** for three years after the date of hire **or** for one year after employment is terminated, **whichever is later**. All current employees, therefore, must have I-9s on file with the DGS. Upon request, all Forms I-9 subject to retention requirement must be made available to an authorized official of the Department of Homeland Security, Department of Labor, and/or the Office of Special Counsel for Unfair Immigration-Related Employment Practices of the Department of Justice.

Missing I-9 forms

If the DGS discovers that an I-9 is not on file for a given employee, the Personnel Transactions Unit (PTU) shall request the employee to complete Section 1 of an I-9 form immediately and submit documentation as required in Section 2. The new form shall be dated when completed—**never** post-dated (the PTU may provide an explanatory annotation to an untimely-completed Form I-9). When an employee does not provide acceptable documentation, the DGS **shall** terminate employment to avoid the risk of being subject to penalties for “knowingly” continuing to employ an unauthorized worker if the individual is not in fact authorized to work.

Discovering an unauthorized employee

If the DGS discovers that an employee has been working without authorization, the PTU shall re-verify work authorization by allowing such an employee another opportunity to present acceptable documentation and complete a new I-9. However, the DGS shall be aware that if it knows or should have known that an employee is unauthorized to work in the United States, we may be subject to serious penalties for “knowingly continuing to employ” an unauthorized worker.

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Completing the I-9 form

There are two sections of the Form I-9.

- The employee must complete Section 1.
- The employer must complete Section 2.

The DGS is required to ensure that all sections of the Form I-9 are timely and properly completed.

The table below depicts the section number and the responsibilities of the parties impacted.

Section 1: Employee Information and Verification	
Party	Responsibility
Employee	<ul style="list-style-type: none"> • Employee completes Section 1 upon date of hire (i.e., first day of paid work): <ol style="list-style-type: none"> 1. Enter full name and maiden name, if applicable. 2. Enter current address and date of birth. 3. Enter his/her city, state and social security number. 4. Read warning and attest to immigration status. 5. Sign and date the form. 6. If the employee uses a preparer or translator to fill out the form, the person must certify that s/he assisted the employee by completing this signature block. <p>Note: If employee refuses to sign, terminate the appointment.</p>

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**Completing
the I-9 form
(continued)**

Section 2. Employer Review and Verification	
Party	Responsibility
Employer	<ol style="list-style-type: none"> 1. Records document title(s), issuing authority, document number, expiration date from original documents supplied by employee 2. Enters date of hire (i.e., first day of work) 3. Attests to examining the documents provided by filling out the signature block <p>Receipts employers can accept as proof of temporary employment eligibility are:</p> <ul style="list-style-type: none"> ✓ Receipts for the application of a replacement document where the document was lost, stolen, or destroyed, which can be a List A, List B, or List C document. The employee must present the replacement document within 90 days from the date of hire. ✓ The arrival portion of a Form I-94 with an attached photo and a temporary I-551 stamp, which is a receipt for a List A document. When the stamp expires, or if the stamp has no expiration, one year from date of issue, the employee must present the Form I-551 Permanent Resident Card. ✓ The departure portion of the Form I-94 with a refugee admission stamp, which is a receipt for a List A document. The employee must present, within 90 days from date of hire, Form I-766, or a List b documents and an unrestricted Social Security card. <p>Note: When an employee provides an acceptable receipt, the employer should record the document title in Section 2 and write the word "receipt" and any document number in the "Document #" space. When the employee presents the actual document, the employer should cross out the word "receipt" and any accompanying document number, insert the number from the actual document presented, and initial and date the change.</p>

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Future expiration dates

Future expiration dates may appear on the employment authorization documents of aliens, including, among others, permanent residents and refugees. The existence of a future expiration date:

1. does not preclude continuous employment authorization
 2. does not mean that subsequent employment authorization will not be granted; and
 3. should not be considered in determining whether the alien is qualified for a particular position
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Reverifying employment authorization for current employees

When an employee's work authorization expires, you must reverify his/her employment eligibility. Use Section 3 of the Form I-9 or if Section 3 has already been used for a previous reverification or update, use a new Form I-9. If you use a new Form I-9, write the employee's name in Section 1, complete Section 3, and retain the new form with the original. The employee must present a document that shows either an extension of the employee's initial employment authorization or new work authorization. If the employee cannot provide you with proof of current work authorization (e.g., any document from List A or List C, including an unrestricted Social Security card), you cannot continue to employ that person.

Note: List B identity documents, such as a driver's license, should not be reverified when they expire.

To maintain continuous employment eligibility

To maintain continuous eligibility, an employee with temporary work authorization should apply for new work authorization at least 90 days before the current expiration date.

Note: You must reverify an employee's employment eligibility on the Form I-9 not later than the date the employee's work authorization expires.

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Reverifying or updating employment authorization for rehired employees

If you rehire an employee who has previously completed a Form I-9, you may reverify on the employee's original form I-9 (or on a new form I-9 if Section 3 of the original has already been used) if:

1. you rehire the employee within three years of the initial date of hire; and
2. the employee's previous grant of work authorization has expired, but s/he is currently eligible to work on a different basis or under a new grant of work authorization that when the original form I-9 was completed.

To reverify, you must:

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

If you rehire an employee who has previously completed a Form I-9, you may update on the employee's original form I-9 or on a new Form I-9 if:

1. you rehire the employee within three years of the initial date of hire; and
2. the employee is still eligible to work on the same basis as when the original form I-9 was completed.

To update, you must:

1. record the date of rehire;
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: Employers always have the option of completing Sections 1 and 2 of a new Form I-9 instead of completing Section 3 when rehiring employees.

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Copying of Documentation The DGS may, but is not required to, copy a document (front and back) presented by an individual solely for the purpose of complying with the I-9 verification requirements. If such a copy is made, it must be retained with the Form I-9.

Frequently asked questions For answers to frequently asked questions, refer to the I-9 Handbook at:
<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a2e29c7755cb9010VgnVCM10000045f3d6a1RCRD&vgnnextchannel=a2e29c7755cb9010VgnVCM10000045f3d6a1RCRD>

Attachment I-9 forms in English and Spanish:
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=31b3ab0a43b5d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=db029c7755cb9010VgnVCM10000045f3d6a1RCRD>