

Will Your I-9 Forms Hold Up to an Audit?

The Department of Homeland Security (DHS) and the Department of Labor (DOL) Wage and Hour Division have partnered to identify companies that hire undocumented workers. The reasoning is that businesses that hire undocumented workers tend to be those that do not comply with other federal and/or state labor regulations. Reviewing your I-9 forms and process will help you feel ready if your company is ever faced with an audit from the U.S. Immigration and Customs Enforcement (ICE).

What will an auditor want to review?

If your company is selected for an ICE audit, the auditor will likely want to review:

- Original I-9 forms
- A list of all active, inactive, and terminated employees
- Quarterly wage and hour reports
- Payroll data
- Quarterly tax statements
- Quarterly unemployment insurance reports
- Social Security no-match letters received
- The company's I-9 policy
- The name of the company's I-9 coordinator

Be prepared to have these items available and in proper order in the event of an audit. In addition, make sure your company has one person who is designated as the I-9 coordinator and is familiar with the U.S. Citizenship and Immigration Services' [Handbook for Employers \(Guidance for Completing Form I-9\)](#).

What are your noncompliance risks?

Failure to comply with I-9 requirements can subject the employer to a variety of different civil and criminal penalties. Fines increase significantly if they are repeat offenses. Examples of fines and criminal penalties include:

- Paperwork violations may result in fines between \$234 and \$2,332 for each individual on whose Form I-9 a mistake is made.
- Hiring or continuing to employ a person you know is not authorized to work in the United States may result in fines between \$583 and \$4,667 for a first offense.
- Criminal penalties, including steep fines and imprisonment, may also be imposed where there appears to be a pattern or practice of violations or where an employer knowingly hires nonimmigrant workers who were illegally brought into the United States in violation of the alien smuggling/criminal harboring provision.

NOTE TO EMPLOYERS: There is an updated [Form I-9](#) that must be used by employers (rev. 10/21/19). The new form should be used for all new hires as of January 31, 2020.

All organizations should conduct an internal Form I-9 audit. Many employers are surprised by how many errors or omissions they find once they begin their audit.

The following is a list of frequently asked questions (FAQs) to assist employers who are conducting a Form I-9 compliance audit. They are categorized under **General Audit**, **Problems with Active Employees' I-9 Forms**, and **Terminated Files**.

General Audit

1. Where should I file the Form I-9's on active employees?

It is recommended that they are kept alphabetically in a binder. You can also add alphabetic tabs to the binder making it easier to organize within each letter tab.

2. How should I document an internal audit?

Provide a summary of the internal audit, including such information as to who the audit coordinator is, the timeframe in which the audit was conducted, the methodology used to conduct the audit, the problems found, and the corrections made.

This will help the company in the event there is a change in employer representatives and its necessary to understand what changes were made and why. The documentation also provides evidence of good faith efforts to the U.S. Department of Immigration and Customs Enforcement (ICE), or other governmental agencies working on ICE's behalf.

3. If I find a mistake on a Form I-9, would it be preferable to have the employee complete a new Form I-9?

Completing a new Form I-9 is a lot of work and should be avoided unless there are so many mistakes on the original I-9 form that it isn't possible to correct the original. Where a new Form I-9 is needed, staple the original Form I-9 to the back of the new form. A note should also be included in the file regarding the reason you made the changes to the existing Form I-9 or completed a new Form I-9. Do not conceal any changes made on the form. Doing so may lead to increased liability under federal immigration law. It is best not to use correction fluid (white out) or correction tape but if you do, that should be included in the explanation note to file.

4. I found some errors on my organization's Forms I-9 and will be completing new Forms I-9. Once the new Form I-9 has been completed, should I shred the old I-9 or keep it and staple the old I-9 to the back of the new I-9?

It is recommended to keep the old Form I-9 so stapling the old form to the back of the new I-9 is preferred.

5. How is the I-9 updated when an employee changes their name?

You are not required to update Form I-9 when your employee has a legal change of name. However, it is recommended that you maintain correct information on Forms I-9 and note any name changes in Section 3. If you do so, then you should also complete the Last Name, First Name, and Middle Initial fields in the Employee Name from Section 1 area at the top of Section 3.

6. Why is there space to enter multiple List A documents?

If you look at the acceptable List A documents, several list multiple required documents (Ex: Foreign Passport with Form I-94. Two boxes need to be completed. One for the foreign passport, and one for the I-94 card.)

Problems with Active Employees' I-9 Forms

1. What happens if I don't have a completed Form I-9 for an employee?

Note this on your audit log as a corrective action item. Complete a Form I-9 with the employee. In completing the I-9, do so using the date of the audit or the date that supporting documents are reviewed. Do NOT back date the I-9.

2. What do I do when the information provided is incomplete or incorrect in Sections 1 or 2?

Have the employee insert the correct information as appropriate and date and initial the I-9 using the date corrected. Remember that documents supporting the change must always be viewed when Section 1 or 2 is completed. Note that Section 1 can only be corrected by the employee (or translator) and Section 2 can only be completed by the employer or authorized representative.

3. What do I do when the Section 3 information provided is incomplete, incorrect or needs to be re-verified?

If deficiencies are noted or re-verification is required, enter the updated data in Section 3 of the form using the date changes or re-verifications have been conducted. Remember that documents supporting the change or re-verification must always be viewed when Section 3 is completed.

4. What should I do if the employee entered dates do not match up with the required MM/DD/YYYY format?

If date formats do not match the required format (MM/DD/YYYY), they should be corrected with a separate colored pen and initialed. This should also be noted on the memo to the I-9 file regarding issues discovered during the audit. Do not alter the employee's handwritten date in Section 1.

5. What should be done if a document from List A is noted, but also documents are listed for Lists B and C?

Either strike a line through the documents listed for B and C (or strike a line through the documents listed for A) and indicate the audit date and the initials of the auditor. Note the edit on the audit log. Make a note to that effect in Section 2 and indicate the audit date and the initials of the auditor. Note the edit on the audit log.

6. What should be done if Lists B and C show documents that are only appropriate for List C? For example List B provides Social Security Card information and List C provides birth certificate information.

Strike out the List B documentation and enter appropriate List B documentation after reviewing new List B document. Indicate date corrected auditor's initials. Note the edit on the audit log.

7. What do I do if I have copies of I-9 documents for some I-9 forms and not for others?

Copies of documents are not required. The auditor should consider getting copies for those Forms I-9 where there are none and/or shredding all copies. The key is consistency. Lack of consistency could lead to problems if ICE audited your company.

8. What should be done if employment authorization (e.g., visa authorization) is no longer valid?

If deficiencies are noted or re-verification is required, enter updated data in Section 3 of the form using the date changes or re-verifications have been conducted. Remember that documents supporting the change or re-verification must always be viewed when Section 3 is completed. Create a re-verification tickler file for the future to ensure that re-verification is done prior to the expiration date of the authorization documentation.

Permanent Resident Cards (also known as Alien Registration Receipt cards, Forms I-551, Resident Alien Cards, Permanent Resident Cards, or "Green Cards") are issued to lawful permanent residents and conditional residents and should not be re-verified when the cards expire. Temporary evidence of permanent resident status in the form of a temporary I-551 stamp in an unexpired foreign passport is subject to re-verification. This is because of the temporary nature of this document. Likewise, documents from List B need not be re-verified when they expire. In fact, documents from List B are acceptable even if they have already expired at the time that they are initially shown.

9. What should I do if the employee's last name has changed since it was completed when the employee was first hired?

The name should not be changed on the form. However, you can add a note to the form that indicates the employee experienced a name change and then file the I-9 under the new name and note this change on the audit log as well as on the binder log.

10. What if when trying to correct or complete a Form I-9, an employee is unable to present the appropriate documentation?

Give the employee some time to come up with the appropriate documentation. However, if the employee is not able to provide the appropriate documentation, you, as the employer, must decide whether or not to continue employing the individual.

In certain circumstances, employers and recruiters must accept a receipt in lieu of a List A, B, and C document if one is presented by an employee. Depending upon the document in question, the receipt is good for up to 90 days. At that time, the employee must present the actual document.

11. When reviewing the Forms I-9, I noticed that the date of hire was either found blank or was completed with the date the form was completed. How should this be corrected?

The area in Section 2 that asks for the date of hire should be corrected to include the employee's date of hire. Put a slash through the incorrect data, indicate the correct date of hire, and initial and date the correction.

12. In reviewing the Forms I-9, I noticed that some of the Forms I-9 were not completed within the required legal time frame. Is there anything that can be done?

There is no remedy for this mistake; however, it should be noted on the audit summary.

13. For a number of the forms, the documents' issuing authority (e.g., Social Security Administration) lines were not fully or accurately completed.

It is necessary to include all of the information requested on the form relating to the verification documents as indicated on the left side of the form in Section 2. Where applicable, clearly print the following (always initial and date corrections):

- Document Title (example: *STATE* Driver's License)
- Issuing Authority (example: *STATE* Department of Motor Vehicles)
- Document Number (example: Driver's License Number)
- Expiration Date, if applicable (example: passport)
- Additional Document Number or Expiration Date (applicable only to certain List A documents)

14. When reviewing Forms I-9, I noticed on several forms, liquid paper/white out was used.

There is nothing to correct. In the future, white out should not be used when making corrections. When errors are made, the employer's representative should strike through the error and write the correct information nearby. Note the error in the audit summary.

15. When going through the Forms I-9, I noticed that several forms did not include the back of the Form I-9.

You can copy the correct back of form to the Form I-9. In the future, ensure that new employees receive a complete form that includes the front and the back, plus the instructions. However, only the completed form needs to be filed.

16. During the audit I found that there were different colored pens used in Section 2 and certification section which can look suspicious, leading an external auditor to wonder if the form was completed on more than one day.

There is no remedy. In the future, keep to the same pen when completing the certification section. Note the error in the audit summary.

Terminated Files

1. How long do I have to keep terminated employees' Forms I-9?

You are required to keep the Forms I-9 on terminated employees 3 years from their hire date or 1 year from the

date their employment was terminated, whichever is later.

2. What do I do when I find I-9s for terminated employees that are beyond the purging date?

Purge the terminated employees' Forms I-9 that are beyond the purging date and note which forms were purged on your I-9 purge roster with the date of purging. Purged I-9s should be moved to the shred destruction area.

3. What do I do about the mistakes on a terminated employee's Form I-9?

There is no remedy for mistakes and omissions on terminated employees' Forms I-9.

4. Should I document terminated and purged Forms I-9?

Yes, create a log of all terminated employee's Forms I-9 and list date each form may be purged and then log the date the form will actually be purged/shredded.

5. What is the best method for organizing terminated employees' Forms I-9?

A suggested way is to keep the Forms I-9 in a binder and organized by the year in which they should be purged versus alphabetically.