Form I-9 Completion & Maintenance for Employers/HR

Presented by Kripa Upadhyay, Of Counsel at Buchalter, P.C

About Me

My practice intersects Immigration, Corporate/Business Law, Foreign Direct Investment, and International Trade Compliance. She has expertise in guiding corporate clients and individual investors through the complex web of laws and regulations related to immigration to the United States.

Awards and Honors

- Chambers USA, Immigration Law, 2024 and 2025
- Washington State Bar Association's (WSBA) Community Service Award, 2011
- ■Rising Star by Super Lawyers magazine for Immigration Law, 2014 2018

Purpose of Form I-9

- In compliance with the Immigration Reform and Control Act of 1986, all U.S. employers must verify the identity and employment eligibility of all new employees (both citizen and noncitizen) hired after November 6, 1986.
- This requirement is satisfied by having the new employees complete Form I-9.
- Form I-9 also is used to re-verify work authorization information for rehires and employees who renew their work authorization documentation.

The Form I-9

Form I-9 consists of three sections:

Section 1 – Employee Information and Verification

• Must be completed by the new employee on the date the employee begins employment and can also be completed prior to the beginning of employment, after an employment offer has been made to the individual.

Section 2 – Employer Review and Verification

• Must be completed by the company's representative before or within three business days of beginning employment.

Section 3 – Updating and re-verification

This section is used only to update or re-verify Form I-9.

Key Highlights

- 1. Use the most recent version of the form edition date expires 05/31/2027
- 2. Employers in Puerto Rico ONLY may use the Spanish version dates 05/31/2027
- 3. Employers may remotely examine employees' Form I-9 documents ONLY if they are enrolled in E-Verify
- 4. Alternate Procedure for all others: Can appoint an attorney or authorized representative in another state to act as the representative of the employer.

Make sure to consult State rules because there may be restrictions on who can act as a 3rd party representative.

California for example, allows only licensed attorneys, individuals authorized under federal law to provide immigration services, and individuals qualified and bonded as immigration consultants to act in this capacity.

failing to comply with the requirements for completing this form. See below and the Instructions. ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in Section 1, or specify which acceptable documentation employees must present for Section 2 or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal. Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer. Last Name (Family Name) First Name (Given Name) Middle Initial (If any) Other Last Names Used (if any) Apt. Number (if any) ZIP Code Address (Street Number and Name) City or Town State Date of Birth (mm/dd/yyyy) U.S. Social Security Number Employee's Email Address Employee's Telephone Number Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.): I am aware that federal law provides for imprisonment and/or 1. A citizen of the United States fines for false statements, or the 2. A noncitizen national of the United States (See Instructions.) use of false documents, in connection with the completion of 3. A lawful permanent resident (Enter USCIS or A-Number.) this form. I attest, under penalty An alien authorized to work until (exp. date, if any) of perjury, that this information, including my selection of the box If you check Item Number 4., enter one of these: attesting to my citizenship or immigration status, is true and USCIS A-Number Form I-94 Admission Number Foreign Passport Number and Country of Issuance correct. Signature of Employee Today's Date (mm/dd/yyyy) If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the Preparer and/or Translator Certification on Page 3. Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see Instructions. List A List B AND List C Document Title 1 Issuing Authority Document Number (If any) Expiration Date (if any) Additional Information Document Title 2 (if any) Issuing Authority Document Number (If any) Expiration Date (if any) Document Title 3 (if any) Issuing Authority Document Number (If any) Expiration Date (if any) Check here if you used an alternative procedure authorized by DHS to examine documents. First Day of Employment Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named (mm/dd/yyyy): employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States. Last Name, First Name and Title of Employer or Authorized Representative Signature of Employer or Authorized Representative Today's Date (mm/dd/yyyy) Employer's Business or Organization Name

For reverification or rehire, complete Supplement B, Reverification and Rehire on Page 4.

Employer's Business or Organization Address, City or Town, State, ZIP Code

Section 1: Completed by Employee

Employee Information and Verification Section

- Section 1 of the form must be completed and signed by the new employee on the date employment begins (or prior to that date) .
- A translator or preparer may be used by the employee to complete Section 1 of the form. However, the form must be signed by the employee, and the translator or preparer must complete the last portion of Section 1.
- Social Security numbers are not required from new employees (unless E-verify is used by the employer).
- When an employee enters an employment authorization expiration date in Section 1, the employer is required to re-verify employment authorization for the employee in Section 3 on or before the expiration date provided by the employee.

Section 1: Common Mistakes

Frequently spotted errors in the first section of the I-9 include:

- Failure to complete Section 1
- Unchecked box for immigration status
- Lack of proper signature or date
- No full address
- •Missing Social Security number (if using E-Verify)
- •Using partial name instead of full legal name (MUST use BOTH Last Names + Suffix ex:

Last Name: Doe-Doe, Jr (any other suffix)

First Name: Donald (Not Don or Donny or any other preference)

Section 2: Employer Review & Verification

- •The new employee must present *original* and *unexpired* document(s) that prove his or her identity and employment authorization. Certified copies of birth certificates are acceptable.
 - Documents from List A show both identity and employment authorization.
 - Documents from List B show identity only (employers participating in E-verify can only accept List B documents with a photograph).
 - Documents from List C show employment authorization only.
- •You must accept any document(s) from the Lists of Acceptable Documents presented by the new employee that reasonably appear on their face to be genuine and relate to the person. You cannot specify which document(s) an employee should present.
- Examine the documents presented and fully complete Section 2 by recording the title, issuing authority, number and expiration date (if any) of the document(s).

Section 2: Common Mistakes

- •Failure to complete List A or Lists B and C.
 - ONE document from List A OR
 - ONE Document from List B AND ONE document from List C
- •Failure of company representative to sign Section 2.
- •Failure to complete and sign form by 3 days after first day of employment.
- •Over-documentation (e.g., completing List C despite a satisfactory List A). This could trigger an investigation by the Immigrant & Employee Rights team within the Department of Justice as it may show the intent to discriminate.

Receipt Rule

- •An individual may present a receipt in lieu of a document listed on Form I-9 to complete Section 2 or Section 3. The receipt is valid for a temporary period. There are three different documents that qualify as receipts under the rule:
 - 1. For a replacement document when the document has been lost, stolen or damaged: the receipt is valid for 90 days, after which the employee must present the replacement document to complete Form I-9.
 - 2. The arrival portion of Form I-94/I-94A containing a temporary I-551 stamp and photograph. This is valid until the expiration date of the temporary I-551 stamp or one year from the date of issue if no expiration date.
 - 3. The departure portion of Form I-94/I-94A with an unexpired refugee admission stamp. This is valid 90 days from the date employment begins or on the date employment authorization expires.

Receipt Rule.....Contd

- Receipts showing that a person has applied for an initial grant of employment authorization or for renewal of employment authorization are NOT acceptable.
- When an acceptable receipt is presented, record the document's title in Section 2 and write down the word "receipt" and its document number. Enter the last day the receipt is valid in the Expiration Date field.
- When the employee later presents the actual document, cross out the word "receipt" and any accompanying document number, insert the number from the actual document presented, and initial and date the change.

Additional Documentation Requirements

Foreign Students in F-1 Nonimmigrant Status Participating in Curricular Practical Training: CPT allows students to accept paid alternative work/study, internships, cooperative education or any other type of required internship or practicum that employers offer through cooperative agreements with the students school.

For form I-9 purposes, the combination of the following documents in considered a list A document, evidencing both identity and employment authorization

The student's unexpired foreign passport;

Form I-20 with the designated School Official's endorsement for employment on page 3

A valid form I-94A, Arrival/departure report indicating F-1 non-immigrant status

The employer should record the foreign passport and I-94 numbers in Section 2 under List A of form I-9. Write the SEVIS number and the program expiration date from form I-20 in the margin of form I-9 near Section 2

Additional Documentation Requirements

J-1 EXCHANGE VISITORS

The exchange visitor (J) may work legally in the United States if the work is part of an approved program, or if h/she receives permission to work form the official program sponsor.

The J-1 exchange visitor receives several documents in connection with their program, Form form I-9 purposes, the combination of the following documents is considered a List A document, evidencing both identity and employment authorization:

The exchange visitor's unexpired foreign passport

Form DS-2019(*J-1 exchange visitors cannot work after the program end date on this form*)

A valid form I-94 or I-94A indicating J-1 non-immigrant status

A letter or other documentation from the Responsible officer in the case of a J-1 nonimmigrant student.

The employer should record the foreign passport and I-94 numbers in Section 2 under List A of form I-9. Write the SEVIS number and the program expiration date from Form DS-2019 in the margin of form I-9 near Section 2. In the case of J-1 nonimmigrant students, also note the documentation from the responsible officer in the margin near Section 2.

New Information and Form I-9/New ID

Verify the New Information:

If the employee provides a new name, date of birth, or A-Number, the employer should first ask the employee to provide documentation (e.g., marriage certificate, updated Social Security card, etc.) to support the change.

The employer should review the documentation and determine if it reasonably appears to be genuine and relate to the employee.

Update Form I-9:

If the new information is reasonably linked to the employee:

If the change is due to a legal name change (e.g., marriage), the employer should update Form I-9, Section 2 with the new name and retain a copy of the supporting documentation with the Form I-9.

For other changes, like a different date of birth or A-Number, the employer should complete Supplement B, Reverification and Rehires (formerly Section 3), indicating the change and attaching supporting documentation.

If the change requires a new Form I-9, complete it with the original hire date in the space provided, attach it to the original, and include a written explanation.

If the new information is significantly different and cannot be reasonably linked to the original information:

Complete a new Form I-9 with the original hire date and attach it to the previous Form I-9.

New Information and Form I-9/New Name

To enter a legal name change in Supplement B, Reverification and Rehire without reverification or rehire:

Enter the employee's new name in the New Name fields.

Enter your name and sign and date the block you completed on Supplement B, Reverification and Rehire.

In either situation, you should take steps to ensure the employee's name change is accurate. This may include asking them to provide legal documentation showing the name change, such as a marriage certificate or new State/Government issued identity in case of employees who may have recently transitioned.

Make a copy of that document to keep with Form I-9 in the event of an inspection.

New Information and Form I-9/E-Verify

Your employees should record their legal name change with the SSA to avoid mismatches in E-Verify. For more information, visit www.e-verify.gov.

If you complete a new Form I-9 based on a non-legal name change, you should confirm the new Form I-9 information through E-Verify. If you do not complete a new Form I-9, you should not create a new E-Verify case.

Federal contractors who are subject to the Federal Acquisition Regulation (FAR) E-Verify clause and who choose to verify existing employees by updating an already-completed Form I-9 are subject to special rules regarding when they must complete a new Form I-9. If you choose to update Form I-9 for existing employees, you must complete a new Form I-9 when an employee changes their name. For more information, see the E-Verify Supplemental Guide for Federal Contractors, at www.e-verify.gov

Correcting Errors on Forms I-9

If you discover an error or missing information in Section 1 of an employee's Form I-9, you should ask the employee to correct the error or add the missing information. Only employees, or their preparer and/or translator, may correct errors or omissions made in Section 1.

Draw a line through the incorrect information;

Enter the correct or missing information; and

Initial and date the correction.

You should attach a written explanation of why information was missing or needed correcting. If the employee's employment has ended, a signed and dated statement identifying the error or omission attach to the existing form and explain why corrections could not be made, for example, the employee no longer works for you.

If the employee is remotely located, you should develop the appropriate business process to allow them to correct or enter missing information.

Retaining Copies of Form I-9 Documentation

- Employers are NOT required to retain copies of the List A, B or C documents that an employee provides. IF you choose to maintain for one employee, then you MUST maintain for ALL employees.
- For companies that participate in E-Verify and use Photo Matching: When 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 the employee presents and attach it to the I-9.
- Collecting copies of the documents is NOT enough. You MUST also complete the form I-9.

Onboarding Remote Employee

1. Employee Completes Section 1:

The employee provides personal information, attests to their work authorization, and signs the form on or before their first day of employment.

2. Employer Verifies Documents:

In-Person Verification (for non-E-Verify users): An authorized representative physically examines the employee's documents to ensure they reasonably appear to be genuine and relate to the employee.

Remote Verification (for E-Verify users ONLY): If the employer uses E-Verify, they can utilize an alternative procedure to remotely examine the documents. This may involve reviewing digital copies, conducting a live video call, and annotating the I-9 form to indicate the remote verification process was used

Onboarding Remote Employee

NON E-Verify Employers:

Authorized Representative Completes Section 2:

The employer or their representative reviews Section 1 and then completes Section 2, including verifying the documents and recording the document information

California based employees:

Authorized Representative:

If using an authorized representative, they must be trained on the proper procedures for examining documents and completing Section 2, including the certification.

Employment Authorization Document and Form I-9

1. Automatic Extension:

For Aliens with authorized Employment Authorization Document (EAD), the law MAY allow them to work BEYOND the date of expiration on their EAD cards IF they meet the requirements.

This is a minefield and multiple mistakes and costly I-9 fines follow.

Speak with your attorney/retain an outside attorney to be your "go to" I-9 person if you have a lot of employees in this category.

2. Sudden Status Expirations!

Employees who previously were authorized for employment under TPS or DACA are vulnerable to sudden changes. Make sure to always stay informed and act accordingly to ensure you are in compliance.

Re-verification

- U.S. citizens and noncitizen nationals never need reverification.
- Do not re-verify an Alien Registration Receipt Card/Permanent Resident Card (Form I-551) or a List B document that has expired.
- Employees cannot work beyond the date their employment authorization expires without re-verifying their authorization to work in the U.S.
 - The employee must present a document that shows either an extension of the initial employment authorization or new employment authorization. This can be any document from List A or C.
 - If Section 3 has already been used for a previous re-verification 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 I-9 with the original.

Rehires

If the employee is rehired within three (3) years of the date the Form I-9 was originally completed, you have a choice of re-verifying the rehire with the use of Section 3 or by completing a new Form I-9 for the rehire. (Employer should choose the method and be consistent)

- If the employee's previously completed Form I-9 indicates that the individual is still eligible to work, you must complete Block A (if applicable), Block B and the signature block to update the original form.
- If the employee's previously completed Form I-9 indicates that the work authorization has expired, complete Block B, Block C and the signature block.
- Update or complete a new Form I-9 on the date re-employment begins.
- •You must complete a new Form I-9 if the original Form I-9 has been replaced by a newer version.

Independent Contractors & Interns

Do I need to complete Form I-9 for independent contractors or their employees?

No. For example, if you contract with a construction company to perform renovations on your building, you do not have to complete Forms I-9 for that company's employees. The construction company is responsible for completing Forms I-9 for its own employees. However, you may not use a contract, subcontract or exchange to obtain the labor or services of an employee if you know that the employee is unauthorized to work.

Do I need to complete an I-9 for Interns?

Yes. If the intern(s) will be paid; irrespective of the length of their internship. Unpaid interns do not need a Form I-9.

E-Verify

E-Verify is an Internet-based system that compares information from an employee's Form I-9, Employment Eligibility Verification, to data from U.S. Department of Homeland Security and Social Security Administration records to confirm employment eligibility.

It is Voluntarily for MOST employers (Mandatory for Federal contractors; employers seeking to hire STEM/OPT workers, and employers in States where E-Verify is Mandatory, ex: Alabama; Arizona; Mississippi; S. Carolina & Utah)

I-9 Process with E-Verify

Employee completes Form I-9, Section 1.	Employee must include SSN when completing Form I-9, Section 1. •If the employee has not been issued his SSN, complete Form I-9 as usual and attach a memo to Form I-9 indicating the reason for the delay in creating the case in E-Verify. •If employee provides email address, employer MUST enter it into E-Verify
Employee chooses which acceptable document(s) to present.	Employee chooses which acceptable document(s) to present. •If a List B document is chosen, it MUST contain a photograph. •If an employee chooses to provide a photo matching document, the employer must make a photo copy and retain with the Form I-9.
Employer completes Form I-9, Section 2	Employer completes Form I-9 Section 2.
If necessary, employer updates or re-verifies employee's work eligibility in Section 3.	E-Verify Case Status will prompt employer to update or re-verify in Section 3 or Form I-9. However, a case should NOT be created in E-Verify

Using E-Verify

You MUST prominently display posters alerting prospective employees that you participate in the E-Verify program

You must enter Form I-9 information into E-Verify for all newly hired employees no later than the third business day after the employees' start date

Once information is transferred from I-9 form, E-Verify will give employer one of three responses:

- 1. Employment Authorized
- 2. Tentative Non-confirmation: There is an information mismatch
- 3. DHS Verification in process: DHS will respond within 24 hours with either: employment authorized or DHS Tentative Non-confirmation

Handling a Tentative Non-confirmation

- Employers should print the TNC Further Action Notice and review it with the employee promptly and privately.
- Employees have the right to contest or not contest a TNC
- Employees who choose to contest should be provided the Referral Date Confirmation
- •Both the TNC Further Action Notice & Referral Date Confirmation are available in multiple languages
- If employee wishes to contest, Employer must refer them to the appropriate agency; however, if Employee chooses not to contest, the employer may terminate employee and close the case in E-Verify.
- •Advice: Do NOT fire employee unless they have been given the opportunity to provide documents to contest the TNC.

TNC Employee Rights

The employee has eight federal government workdays from the referral date to visit or call the appropriate agency to start to resolve the discrepancy.

The employee continues to work during the TNC resolution process

Federal law prohibits employers from terminating employment of an employee because of an interim case result until the TNC becomes a Final Non-confirmation.

Form I-9 Retention Requirements

- •The forms should be stored separately from other personnel files.
- •Employers should have a "tickler" system to re-verify all employees who present work authorization that bears an expiration date and to accurately dispose of old forms or work with an Immigration Attorney who will conduct periodic audits and help company maintain compliance with I-9 laws.
- •Employers may complete or retain I-9 forms in an electronic generation or storage system for as long as the system has reasonable controls to ensure integrity, accuracy and reliability of the data.

Maintaining Form I-9

You must keep a completed Form I-9 on file for each employee on your payroll (or otherwise receiving remuneration) who was hired after Nov. 6, 1986 (or on or after Nov. 27, 2009, if employed in the CNMI).

Never mail Form I-9 to USCIS or U.S. Immigration and Customs Enforcement.

Federal regulations state you must retain a Form I-9 for each person you hire for three years after the date of hire, or one year after the date employment ends, whichever is later. To calculate how long to keep a former employee's Form I-9:

If they worked for less than two years, retain their form for three years after the date you entered in the First Day of Employment field.

If they worked for more than two years, retain their form for one year after the date they stop working for you.

Retaining Forms I-9: Paper Copies

You may retain completed paper forms with original handwritten signatures on-site or at an off-site storage facility for the required retention period, as long as you are able to present Forms I-9 within three business days of an inspection request from DHS, the Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER), or U.S. Department of Labor (DOL) officers.

Retaining Forms I-9: Microfilm/fiche

You may retain copies of completed paper forms with original handwritten signatures on microfilm or microfiche. When using microfilm or microfiche, you should:

Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be more than 20 years, depending on the employee and your business;

Use well-maintained equipment to create and view clear, readable Forms I-9 and reproduce legible paper copies for officials who inspect your forms;

Place indexes either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last jacket of a series.

I-9 Audit Trends

I-9 audits **increased by 375% in 2018**, and overall, **by 5X** during 2018-2021. The rules and regulations for I-9 compliance will continue to evolve. We can and should expect much higher focus on raids and I-9 inspections if there is a change in administration with the 2024 elections.

- •Nearly 6,000 employers were I-9 audited in 2018, and some expect that number to was closer to 10,000 by the end of 2020.
- •\$14 Million in fines were issued in 2019 for Form I-9 violations.
- ■The average penalty per a single non-compliant I-9 is \$1,862.
- •76% of paper Form I-9s have at least one error (and a similar percentage go missing or are incomplete).
- •Although OCAHO has reduced fines by upto 34.16% in 2022-2023, the fines are still significant, ranging from a minimum of \$13,500 (4/28/22) to \$1.5 Million (1/6/22)

Compliance is Crucial!

Actions	2017	10/01/2017-05/04/2018
Worksite Investigations	1,716	3,510
I-9 Audits	1,360	2,282
Criminal Arrests	139	594
Administrative Arrests	172	610

Form I-9 Fines

Higher fines have taken effect for Form I-9 errors and for employers that hire people who are not authorized to work in the U.S.

The Department of Homeland Security has adjusted penalties for inflation and published the revised amounts in the Federal Register. The new penalties are as follows:

- •\$288 to \$2,861 for paperwork violations
- •\$716 to \$5,724 per worker for knowingly hiring, recruiting, referring, or retaining unauthorized workers (first offense)
- •\$5,724 to \$14,308 per worker for knowingly hiring, recruiting, referring, or retaining unauthorized workers (second offense)
- •\$8,586 to \$28,619 per worker for knowingly hiring, recruiting, referring, or retaining unauthorized workers (third or subsequent offense)

The higher penalties impact fines assessed after January 2, 2025.

Standard Audit Protocol

Audit/Subpoena: Employers will receive a **Notice Of Inspection (NOI)** subpoena requesting certain documents and possibly a personal appearance by a company representative. ICE must provide employers with at least three days to provide the documentation (unless a warrant or court order is provided, typically as a part of a criminal investigation that requires document production in less time)

What happens next? ICE may conduct an employer interview. ICE will review the documentation (this is typically performed by an ICE Forensic Auditor) and report back to the employer in a matter of weeks or perhaps months. Several items might be provided to the employer at that time: 1) a list of "suspect documents" requiring the employer to complete new I-9s or terminate the relevant employees; 2) a list of unauthorized aliens who need to be terminated; and 3) a "Notice of Intent to Fine" listing I-9 documentation failures and proposed fines. In certain cases where more egregious violations are uncovered, the U.S. Attorney's Office may become involved to initiate criminal proceedings (e.g., for harboring illegal aliens, assisting with securing fraudulent documents, or for a variety of other violations.)

NOTE: Employees are generally provided 8 days to provide documents in response to "suspect document" letter. DO NOT fire employees without providing them at least 7 days to provide additional documentation to prove eligibility to work. Earlier termination may risk unlawful termination lawsuit against employer!

What is the potential liability? Aside from the more problematic cases where criminal sanctions are sought or more egregious violations are alleged, most audits are likely to result in employer fines. Depending on the size of your organization, these fines can be substantial.

Recommendations & Resources

- 1. Conduct annual internal audits (preferably by Immigration attorney) to ensure ongoing compliance with I-9 requirements
- 2. Prepare a company wide I-9 compliance program
- 3. Train or retrain managers and workers in implementing that program

Resources:

Buchalter Articles:

https://www.buchalter.com/publication/workplace-raids-a-guide-for-employers-on-your-rights-and-responsibilities/

https://www.buchalter.com/publication/corporate-immigration-compliance-preparing-for-enhanced-enforcement-under-trump-2-0/

https://www.buchalter.com/publication/best-practices-for-i-9-compliance-in-2024/

Government Resources:

I-9 Central: https://www.uscis.gov/i-9-central

Handbook for Employers: https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274

Contact Information

Kripa Upadhyay

Buchalter, P.C

Phone: 206-225-1167

kupadhyay@buchalter.com