

UPDATE

What is a Form I-9 and Who Needs One?

Business owners and operators commonly employ human resources to provide labor to and services for their businesses. Since enactment of the Immigration Reform and Control Act of 1986, employers have been required to verify that all newly hired people present facially valid documentation verifying the employee's identity and legal authorization to accept employment in the United States. Employers use "Form I-9", officially the Employment Eligibility Verification form, to verify the identity and legal authorization to work of all paid employees in the United States. The Form I-9 is not required for unpaid volunteers or for contractors. However, a company could still find itself liable if it contracts work to a contractor it knows employs unauthorized workers.

Who Must Complete Form I-9?

Employers must complete a Form I-9 for each person they hire to perform labor or services in the United States in return for wages or other remuneration. "Hire" means the beginning of employment in exchange for wages or other remuneration. "Remuneration" is anything of value given in exchange for labor or services, including food and lodging.

A Form I-9 is not required for people hired on or before November 6, 1986; employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis; independent contractors; employed by a contractor providing contract services, such as employee leasing or temporary agencies, to an employer; or not physically working on U.S. soil. Minors, individuals under the age of 18, are required to complete Form I-9. A parent or legal guardian may establish identity for a minor if the minor cannot present sufficient documentation.

Completing Form I-9

Several versions of Form I-9 have been issued since the form was first introduced in 1987. The correct – and valid – Form I-9 will have a revision date printed on the bottom left corner of the form and without an expiration date printed at the top of the form.

Form I-9 is available in English and Spanish. Employers in the United States and U.S. territories may use the Spanish version as a translation guide for Spanish-speaking employees, but they must complete and retain

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the English version. Employers in Puerto Rico may use either the Spanish or the English version of Form I-9 to verify new employees. If an employee cannot read or cannot write in English, a translator or preparer may complete the form and sign it on behalf of the employee. Also, a preparer and/or translator may assist an employee complete Section 1 of Form I-9. The preparer and/or translator must then complete the Preparer and/or Translator Certification block.

Form I-9 has three sections. Employees should complete and sign Section 1 at the time of hire by filling in the correct information and signing and dating the form. The employer should ensure that all hand written information is clearly written and legible. Employers complete Section 2 and, when applicable, Section 3. If an individual is hired for less than three business days, Section 2 must be completed no later than the first day of employment. An employer may designate or contract with someone, such as a personnel officer, foreman, agent, or notary public, to complete Section 2. Anyone who completes Form I-9 on behalf of the employer must carry out full Form I-9 responsibilities.



E-Verify

Employers may use the electronic “E-Verify” system to help confirm the employment authorization of new hires. E-Verify can be used by employers in all 50 states, as well as the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. After completing the online version of Form I-9 for a new employee, the employer will subsequently receive a response from E-Verify regarding the employee’s employment authorization or status. If the E-Verify response indicates a “tentative non-confirmation” of the employee’s employment authorization, the employer must notify the employee. An employee who wishes to contest the result should contact the appropriate agency, the Department of Homeland Security or the Social Security Administration, within the prescribed period of time.

If an employer chooses to use E-Verify, it must be used for all new hires. E-Verify may not be used to prescreen applicants for employment, check employees hired before the company became a participant in E-Verify, or re-verify employees who have temporary employment authorization. Additionally, an employer may not terminate or take other adverse action against an employee based on a tentative non-confirmation.

Documentation for Proof of Identity or Employment Authorization

Prospective employees must provide to the employer, within three business days of the date employment begins, documents that prove their identity and eligibility to work. The employer must accept any document(s) from the Lists of Acceptable Documents that reasonably appear on their face to be genuine and relate to the person presenting them.

Documents which establish both identity and employment eligibility are known as “List A” documents and include an unexpired U.S. Passport; a U.S. Passport Card; a Permanent Resident Card (often called a “green card”) or Alien Registration Receipt Card with photograph; an unexpired Temporary Resident Card; an unexpired foreign passport with an I-551 stamp or Form I-94; an unexpired Employment Authorization Document issued by the United States Department of Homeland Security that includes a photograph; and an unexpired Employment Authorization Card.



Prospective employees may use one document to establish identity – known as “List B” documents – and a separate document to establish employment eligibility – known as “List C” documents. List B documents include: a driver’s license or federal or state identification card issued by a U.S. state or outlying possession of the U.S. (must contain a photograph or identifying information such as name, date of birth, sex, height, eye color and address); a school identification card with photograph; a U.S. Armed Services identification card or draft record; voter registration card; a U.S. Coast Guard Merchant Mariner Card; a Native American tribal document; a driver’s license issued by a

Canadian government authority; or trusted traveler documentation (e.g. Global Entry, NEXUS, SENTRI). Individuals under the age of eighteen may use a school record or report card; clinic, doctor or hospital record; or daycare or nursery school record to establish identity.

Employees who supply an item from List B must also supply an item from List C. Documents that may be used from List C to establish employment eligibility include: a U.S. Social Security card (unless it indicates “NOT VALID FOR EMPLOYMENT”, “VALID FOR WORK ONLY WITH INS AUTHORIZATION”, or “VALID FOR WORK ONLY WITH DHS AUTHORIZATION”); a birth certificate issued by the U.S. Department of State; an original or certified copy of a birth certificate from the U.S. or an outlying possession of the U.S. bearing an official seal; a Certificate of U.S. Citizenship; a Certificate of Naturalization; a Native American tribal document; a U.S. Citizen ID Card; an ID Card for the use of a Resident Citizen in the United States; an unexpired employment authorization card issued by the Department of Homeland Security (DHS) other than those included on List A; and a Consular Report of Birth Abroad.

Reverification

Employers must update or re-verify certain identification documents at or prior to their expiration date. This does not apply to already-presented and accepted non-expired U.S. Passports or Permanent Resident Cards when they reach their expiration date, nor to any “List B” documents. Certain employees who are authorized to work for a specific employer and on whose behalf an application for an extension of stay has been filed, may continue working for the same employer for up to 240 days from the date the authorized period of stay expires.

For a U.S. citizen, a completed Form I-9 is valid continuously, unless a break of more than a year of employment occurs. International employees on student (F-1), specialty occupation (H-1B), or exchange visitor (J-1) visas must have their Form I-9s re-verified each time their visa expires with a new work authorization permit.

Retaining Copies of Form I-9 Documentation

Employers must retain a Form I-9 for each person hired for a period of three years after the date of hire or one year after the date employment is terminated, whichever is later. This requirement applies from the date of hire, even if the employment ends shortly after hired, the hired employee never completes work for pay, or never completes the Form I-9.

Form I-9s can be retained on paper or electronically. The forms may be kept on-site or at an off-site storage facility provided the documents can be presented within three days of an inspection request from DHS, the Department of Justice’s Civil Rights Division, Immigrant and Employee Rights Section, or U.S. Department of Labor officers. Appropriate security measures must be in place and in force. If the employer chooses to make copies of the documents of one employee, copies of the documents must be made for all employees. The original documents should be returned to the employee.

Summary

Many businesses have employees. Employers are required to verify the identity and employment authorization of employees using Form I-9. The employee must complete the appropriate section of the Form I-9 and present acceptable documents evidencing identity and employment authorization. The employer must: 1. Examine the employment eligibility and identity document(s) the prospective employee presents to 2. Determine whether the document(s) reasonably appear to be genuine and relate to the employee and 3. Record the document information on the Form I-9. Employers must also retain Form I-9 for the appropriate time and make it available for inspection by authorized government officers.

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Ag Help Wanted: Guidelines for Managing Agricultural Labor is an educational guidebook designed to assist every person who currently manages or expects to manage human resources on farms, ranches, nurseries, dairies, and other agricultural operations. The text includes chapters covering:

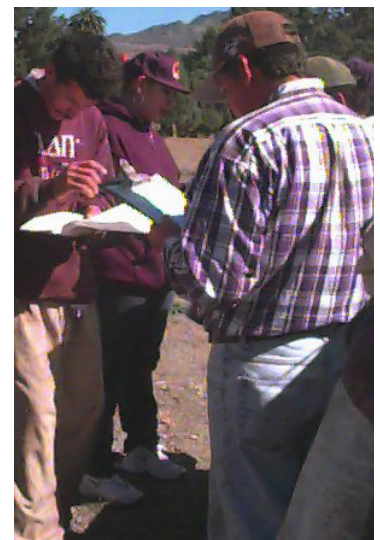
- Organization Planning | Compliance Information;
- Organization Planning | Engaging Labor through Contractors;
- Staffing the Farm Business | Lawful and Unlawful Discrimination; and
- Staffing the Farm Business | H-2A Agricultural Work Visas

RESOURCES:

Much of the information presented in this document was drawn from U.S. Department of Labor and U.S. Citizenship and Immigration Services.

U.S. Citizenship and Immigration Services. <https://www.uscis.gov> (accessed April, 2020).

U.S. Department of Labor. <https://www.dol.gov> (accessed April, 2020).



List A Documents. Documents that Establish Both Identity and Employment Authorizations.

~ all documents must be unexpired ~

- U.S. Passport or U.S. Passport Card.
- Permanent Resident Card or Alien Registration Receipt Card (Form I-551). Also known as “green cards”.
- Employment Authorization Document Card (Form I-766).
- Foreign passport with Form I-94 or Form I-94A and an endorsement to work.
- Passport from the Federated States of Micronesia or Republic of the Marshall Islands with Form I-94 or Form I-94A.
- Foreign passport containing a Form I-551 stamp or Form I-551 printed notation.

Source: U.S. Citizenship and Immigration Services (<https://www.uscis.gov>) as of 2020 April 13.

List B Documents. Documents that Establish Identity.

~ all documents must be unexpired ~

- Driver’s license issued by a U.S. state or outlying territory of the U.S. It must contain a photograph or information such as name, date of birth, gender, height, eye color, and address.
- ID card issued by federal, state, or local government agencies or entities. It must contain a photograph or information such as name, date of birth, gender, height, eye color, and address.
- School ID card with photograph.
- Voter registration card.
- U.S. military card or draft record.
- Military dependent’s ID card.
- U.S. Coast Gard Merchant Mariner Document card.
- Native American tribal document.
- Driver’s license issued by a Canadian government authority.

For individuals under age 18 and unable to present a document listed above:

- School record or report card.
- Clinic, doctor, or hospital record.
- Day care or nursery school record.

Source: U.S. Citizenship and Immigration Services (<https://www.uscis.gov>) as of 2020 April 13.

List C Documents. Documents that Establish employment Authorization.

~ all documents must be unexpired ~

- U.S. Social Security card. It must not contain restrictive wording such as “NOT VALID FOR EMPLOYMENT”, “VALID FOR WORK ONLY WITH INS AUTHORIZATION”, and “VALID FOR WORK ONLY WITH DHS AUTHORIZATION”.
- Consular Report of Birth Abroad (Form FS-240).
- Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545).
- Certification of Report of Birth issued by the U.S. Department of State (Form DS-1350).
- Original or certified copy of a birth certificate issued by a state, county, or municipal authority or outlying U.S. territory bearing an official seal.
- Native American tribal document.
- U.S. Citizen ID card (Form I-197).
- Identification Card for Use of Resident Citizen in the U.S. (Form I-179).
- Employment authorization document issued by the U.S. Department of Homeland Security.

Source: U.S. Citizenship and Immigration Services (<https://www.uscis.gov>) as of 2020 April 13.

AgHelpWanted makes its programs and materials available to all individuals regardless of race, color, national origin, age, disability, or where applicable, sex, marital status, family status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program.

