

Immigration & Naturalization (I-9) FACT SHEET

The Immigration and Nationality Act requires employers to verify all employees' identity and eligibility to work in the United States. Employers must complete a Form I-9 for all employees, even U.S. citizens.

Form I-9 requires the employee to produce documents showing his or her eligibility to work in the United States and the employer to examine those documents. Both must sign Form I-9, and the form is retained by the employer.

Who must complete an I-9?

- Form I-9s must be completed and retained for all employees hired after November 6, 1986.
- This requirement applies to all employers; there is no minimum number of employees.
- Not covered: casual hires, independent contractors and employees of independent contractors, domestic servants in B-1 status, and B-1 trainees on short term training programs.

How and when must the Form I-9 be completed?

- The employer must complete Form I-9 within 3 business days of hire.
- If the employee cannot produce verification documents within 3 days, he/she can have up to the 90th day of hire if he/she submits a receipt for an application of replacement documents.
- In Section 2 of Form I-9, the employer must attest that it has examined documents verifying both identity and work eligibility. The I-9 form provides lists of acceptable documents, which duplicates the lists on the I-9 Handbook for Employers (website address below).

What should employers be aware of when completing Form I-9?

- An employer may not require or specify which documents on the list an employee must present.
- Employees must present unexpired originals of these documents.
- The employer must note the identification number and expiration date (if any) of any document an employee provides.
- Employers are not required to copy and retain the examined documents, but may do so.
- The acceptable documents are subject to change, so employers should make sure that the list of documents used to complete Form I-9 is current.
- If an employee does not have the documents showing identity and work authorization, the employee may present a receipt showing he/she has applied for a replacement document or an extension.

How long do employers have to retain the Form I-9?

- Employers must retain the completed I-9 and make it available for inspection by the BICE or the U.S. Department of Labor until the later of 3 years from the date of hire or one year after termination.
- Employers are advised to have a separate file for I-9 forms for all employees rather than include them in the individual personnel files.

Do employers have to re-verify the Form I-9?

- If an employee's employment authorization expires or the Immigration Service informs the employer that authorization is insufficient, the employer must re-verify the I-9 before the employee's work authorization expires.
- Re-verification does not apply to U.S. citizens or permanent residents (except permanent residents who have a temporary I-551 stamp in their passports). Re-verification is completed on Part C, Section 3 of the I-9 form.
- Rehires: Where a person is rehired and is still work-eligible, the employer may simply update the I-9 by completing Part B of Section 3, if the rehire is within 3 years of the date of the initial signing of the I-9.
- Employers whose employees are members of a collective bargaining unit or who belong to a multi-employer association may use the Form I-9 completed by a prior employer if the prior employer is a member of the same association, new employment is within 3 years, and the prior I-9 was properly completed.

Is there a good faith defense available to employers?

- ✓ An employer may have a defense if it acts in good faith to comply with I-9 requirements. It is not a defense that the individual appeared to be a U.S. citizen and not asked to complete a Form I-9. Further, a good faith defense is not available where BICE or another enforcement agency has given notice of a violation, or where an employer engages in a pattern of verification violations.

What are the penalties for employing unauthorized foreign workers or for failing to complete Form I-9s?

- An employer who knowingly hires unauthorized workers or who continues to employ unauthorized workers may be subject to a cease and desist order with civil money penalties from \$250 to \$10,000 for each unauthorized worker. There are also criminal penalties for repeat offenders, with the possibility of a maximum of 6 months' imprisonment.
- An employer who fails to properly complete and maintain Form I-9s is liable for a civil penalty between \$100 and \$1000 for each individual.