Form I-9
Employment Eligibility Verification
Form I-9

Agenda

Section I: Background
Section II: Completing Form I-9
Section III: Retention & Storage
Section IV: Form I-9 & E-Verify
Background
Background

In 1986, in an effort to control illegal immigration, Congress passed the **Immigration Reform and Control Act (IRCA)**.

**IRCA** does not allow employers to knowingly hire individuals who do not have work authorization in the United States.

The employment eligibility verification provisions of **IRCA** are found in Section 274A of the Immigration and Nationality Act (INA).
Individuals who may legally work in the United States are:

- Citizens of the United States
- Noncitizen nationals of the United States
- Lawful Permanent Residents
- Aliens authorized to work
To comply with the employment eligibility verification provisions of the INA, an employer must:

- Verify the **identity** and **employment authorization** documents of employees hired after November 6, 1986

- Complete and retain a **Form I-9** for each employee hired after November 6, 1986

- Refrain from discriminating against individuals on the basis of actual or perceived national origin, citizenship or immigration status
Background

The anti-discrimination provisions of the INA prohibit four types of unlawful conduct:

- Citizenship or immigration status *
- National origin *
- Document abuse during Form I-9 process
- Retaliation

* Actual or perceived
The anti-discrimination provisions of the INA are enforced by the:

- Department of Justice
- Civil Rights Division
- Office of Special Counsel for Immigration Related Unfair Employment Practices

Employees may contact OSC to obtain additional information regarding discrimination and employee rights & responsibilities:

1-800-255-7688 (TDD: 1-800-616-5525)

Employers may also contact OSC and remain anonymous:

1-800-255-8155 (TDD: 1-800-362-2735)
Form I-9 is an employment verification tool brought about by IRCA.

Form I-9 helps you verify whether individuals are authorized to work in the United States.

Employers who knowingly violate or circumvent the Form I-9 process, or anti-discrimination requirements of the INA may be subject to civil and/or criminal penalties.
Completing Form I-9
Completing Form I-9

All U.S. employers must have a **Form I-9** on file for all current employees

*Exception*: Employers are not required to have **Forms I-9** for employees hired on or before November 6, 1986

You may delegate the authority to complete **Form I-9** to a responsible agent; however, you will retain liability for any errors
You are **not required** to complete **Form I-9** for:

- Domestic service employees working in a private household when work is sporadic, irregular, or intermittent
- Independent contractors for whom you do not set work hours, or provide tools to do the job
- Employees working outside the United States*

* 50 States, District of Columbia, Guam, Puerto Rico, U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands
Mergers & Acquisitions

Employers who acquire employees from a previous employer through a merger or acquisition can either:

1) Treat acquired workers as newly hired employees and complete new Forms I-9, or
2) Consider them as continuing in employment and retain the previous Forms I-9 and retain Form I-9 liability for any previous mistakes.

Under 1 or 2, all acquired employees should be treated the same to avoid discrimination concerns.
Section 1: Employee Information & Verification

To be completed by EMPLOYEE

Employer MUST verify Section 1 is COMPLETE
Completing Form I-9
Section 1: Important Area – Employee Attestation

The EMPLOYEE MUST select one of the four categories and sign and date Section 1 of Form I-9.

All employees must complete Section 1 no later than the 1st business day of employment for pay.
Completing Form I-9
Section 1: Preparer/Translator Certification

This certification is required when Section 1 is prepared by someone other than the employee.

By signing, the preparer is attesting that Section 1 is true and correct to the best of his/her knowledge.

Note that only the EMPLOYEE can sign Section 1’s Employee Signature Block.
Completing Form I-9
Section 2: Employer Certification of Document Review

- Completed by EMPLOYER
- MUST be completed no later than 3 business days after the employee begins work for pay
- EMPLOYER MUST examine original documents
- Documents MUST be UNEXPIRED
Completing Form I-9
Section 2: List of Acceptable Documents

- You must make the list of acceptable documents available to your EMPLOYEE when he or she is completing the Form I-9.

- Make sure you use Form I-9 with (Rev. 02/02/09) or Rev. 08/07/09) – expiration date for both forms is 08/31/2012.

<table>
<thead>
<tr>
<th>LIST A</th>
<th>DOCUMENTS THAT ESTABLISH BOTH IDENTITY AND EMPLOYMENT AUTHORIZATION</th>
<th>LIST B</th>
<th>DOCUMENTS THAT ESTABLISH IDENTITY</th>
<th>LIST C</th>
<th>DOCUMENTS THAT ESTABLISH EMPLOYMENT AUTHORIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>U.S. Passport or U.S. Passport Card</td>
<td>1.</td>
<td>Driver’s license or ID card issued by a State or relying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address.</td>
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<tr>
<td>2.</td>
<td>Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</td>
<td>2.</td>
<td>ID card issued by federal, state or local government agency or entity, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address.</td>
<td></td>
<td></td>
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<tr>
<td>3.</td>
<td>Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation or machine-readable immigrant visa</td>
<td>3.</td>
<td>Certification of Birth abroad issued by the Department of State (Form FS-545)</td>
<td></td>
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<tr>
<td>4.</td>
<td>Employment Authorization Document that contains a photograph (Form I-766)</td>
<td>4.</td>
<td>School ID card with a photograph</td>
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<tr>
<td>5.</td>
<td>In the case of a nonimmigrant alien authorized to work for a specific employer in the United States, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien’s nonimmigrant status, as long as the period of admission has not yet expired and the period of employment is not inconsistent with any restrictions or limitations identified on the form.</td>
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<td>6.</td>
<td>Passport from the Federal States of Micronesia or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association between the United States and the FSM or RMI</td>
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<tr>
<td>7.</td>
<td>Foreign birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal</td>
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<td>8.</td>
<td>Native American tribal document</td>
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<tr>
<td>9.</td>
<td>Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal</td>
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<td>10.</td>
<td>Graduation from an accredited school or college</td>
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<td>11.</td>
<td>High school diploma or high school equivalency certificate</td>
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<td>12.</td>
<td>Employment authorization document issued by the Department of Homeland Security</td>
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</tbody>
</table>
The EMPLOYEE MUST provide either
- one document from **List A OR**
- one document from **List B AND** one document from **List C**
You are not required to be a document expert

You MUST accept a document presented by an employee if it reasonably appears to be

- Genuine AND
- Relate to the individual presenting it

The document MUST be original* – photocopies are NOT acceptable

*The only exception is a certified copy of a birth certificate
Completing Form I-9
Section 2: Receipt Rule

- Receipts may be used as temporary proof of employment eligibility when a List A, B or C document has been lost, stolen or destroyed.
- The receipt must be issued by the originating agency.
- The employee must present a replacement document within 90 days of the hire date.
Completing Form I-9

Section 2: Receipt Rule

- A receipt indicating that an individual has applied for an initial employment authorization document (Form I-766), or for an extension of an expiring employment authorization document (Form I-766) is **NOT** acceptable for Form I-9.

- Receipts are never acceptable if employment will last less than 3 business days.
Completing Form I-9

Section 2: Copying Section 2 Documents

- You may choose to make copies of employee documentation presented to you for Section 2
  - If you choose to photocopy documents, you must do so for **ALL** employees, regardless of actual or perceived national origin, immigration or citizenship status, or you may be in violation of anti-discrimination laws
Completing Form I-9
Section 3: Reverification

You must reverify an employee on Section 3 or on a new Form I-9 if his or her temporary employment authorization has expired. You MAY also complete Section 3 if you:

- Rehire the EMPLOYEE within 3 years of original hire date*
- Update the biographic information of an employee

* USCIS recommends completing a new Form I-9 for rehires
### Completing Form I-9

#### Section 3: Reverification

<table>
<thead>
<tr>
<th><strong>Do Not Reverify</strong></th>
<th><strong>U.S. Passport or Passport Card</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Permanent Resident Card (Form I-551)</strong></td>
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<tr>
<td></td>
<td><strong>List B documents</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Permanent Resident Reverification Exceptions</strong></th>
<th><strong>Reverify only if employee presents a Form I-94 with a temporary I-551 stamp, or</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>A foreign passport with a temporary I-551 notation on a machine readable immigrant visa (MRIV)</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Usually Reverify (WHAT DOES THIS MEAN, USUALLY?)</strong></th>
<th><strong>Others: Reverify only if the employment authorization document (List A or C) presented for Section 2 of the Form I-9 has an expiration date</strong></th>
</tr>
</thead>
</table>
Completing Form I-9
Correcting Mistakes –

- If you discover a mistake on Form I-9:
  - Correct the existing form OR prepare a new Form I-9
  - If you choose to correct the existing Form I-9, line out the incorrect portions, enter the correct information and initial and date the correction
  - If you do a new Form I-9, retain the incorrect form together with the old form. You should also attach a short memo to both the new and corrected Forms I-9 stating the reason for your action.

Missing Forms –

If you discover you are missing the Form I-9 for an employee
- Immediately provide the employee with a Form I-9
- Allow employee 3 business days to provide acceptable documents
- DO NOT backdate the Form I-9
Form I-9

Storage & Retention
Storage

- Form I-9 MUST be on file for all current employees
- Store Forms I-9 securely in a way that meets your business needs – on site, off-site, storage facility or electronically
- Store Forms I-9 and document copies together
- Ensure that only authorized personnel have access to stored Forms I-9
- Make Forms I-9 available within 3 days of an official request for inspection
Retention

Forms I-9 must be stored for 3 years after the date you hire an employee,

or

1 year after the date you or the employee terminates employment, whichever is later
Retention

To identify the retention date, add 3 years to the hire date and 1 year to the date employment was terminated. The date that is later is the retention date.

Example:

John Smith was hired on November 1, 1993 and on July 5, 1994, employment was terminated.

November 1, 1993 + 3 years = November 1, 1996
July 5, 1994 + 1 year = July 5, 1995
The retention date is November 1, 1996
New Employee Hotline – 1-888-897-7781
(available in English and Spanish)

- Created to respond to employee inquiries, issues and complaints. The hotline uses an interactive voice response system. Employees choose from four options:

1. General E-Verify information
2. Completing Form I-9, Employment Eligibility Verification
3. Contesting a Tentative Nonconfirmation or fixing a perceived Final Nonconfirmation error
4. Filing a complaint regarding employer misuse of E-Verify
What is E-Verify?

No-cost Internet based system

Fast & easy to use

Electronically verifies the employment eligibility of:
  • Newly hired employees
  • Existing employees assigned to work on a qualifying Federal contract

Helps maintain a legal workforce

Protects jobs for authorized workers

Partnership between the U.S. Department of Homeland Security and the Social Security Administration
What is E-Verify?

Program Goals

- Reduce unauthorized employment
- Minimize verification-related discrimination
- Be quick and non-burdensome to employers
- Protect civil liberties and employee privacy
How does E-Verify work?

[Diagram showing the process of E-Verify]
Once the employee resolves the record discrepancy, he/she should inform you.

Check E-Verify periodically for one of the following responses:

- Employment Authorized
- Review & Update Employee Data
- Case in Continuance
- DHS Verification in Process
- DHS No Show
- Final Nonconfirmation
Form I-9

For More Form I-9 & E-Verify Information

Form I-9 Employment Eligibility Verification

Form M-274, Handbook for Employers
http://www.uscis.gov/files/nativedocuments/m-274.pdf

E-Verify Website
http://www.dhs.gov/E-Verify
Learn more about Form I-9 & E-Verify

- Verification, Outreach Branch provides:
  - Speakers for your events
  - Panel Participants
  - Exhibit participation
  - Webinars

Form I-9 & E-Verify E-Mail: E-Verify@dhs.gov
Contact Information

Customer Support: (888) 464-4218

Form I-9 & E-Verify E-Mail: E-Verify@dhs.gov

E-Verify Website: www.dhs.gov/E-Verify

Form I-9 Website: Coming Soon – Form I-9 Central
Disclaimer

Immigration law can be complex and it is not possible to describe every aspect of the process.

This presentation provides basic information to help you become generally familiar with rules and procedures.

For more information on the law and regulations please see our website: www.dhs.gov/E-Verify
Thank You