


**LHRMA**  
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**The Rising Importance of I-9 Compliance**




- ❖ The Obama Administration has announced plans to increase I-9 audits on employers. (Wall Street Journal, January 20, 2011)
- ❖ Immigration and Customs Enforcement (ICE) established the Employment Compliance Inspection Center in Crystal City, Virginia, to provide support to ICE in conducting I-9 audits. It would initially be staffed by 15 specialists to review I-9 forms obtained by the audits. Nationalizes the local audit, and lends support in large audits.
- ❖ The audits in the fiscal year ended September 30, 2010 and over 2,740 employers (nearly twice that of the previous year) resulted in a record \$7,000,000 in civil fines.




**The Rising Importance of I-9 Compliance**




- ❖ ICE is targeting large employers e.g., Chipotle, but will continue its audits of small employers.
- ❖ The Department of Homeland Security (DHS) is pushing the use of E-Verify, particularly its IMAGE program (ICE Mutual Agreement).
- ❖ E-verify is mandatory in some states and for some federal and state contractors
- ❖ Audits by ICE can be expensive for employers through the loss of employees and possible fines, as well as legal fees and expenses.
- ❖ The Social Security Administration (SSA) announced that on April 6, 2011, it would resume its controversial "no match letters" where the SSA finds that the W-2 Forms submitted by employers do not match SSA records.




**FORM I-9**




**ALL U.S. EMPLOYERS MUST COMPLETE FORM I-9 EACH TIME THEY HIRE ANY PERSON TO PERFORM LABOR OR SERVICES IN THE UNITED STATES FOR WAGES OR OTHER REMUNERATION.**




**CASES WHERE NO NEW I-9 IS NEEDED**



- REHIRING AN EMPLOYEE WITHIN THREE YEARS OF INITIAL HIRE DATE.
- APPROVED PAID OR UNPAID LEAVE ON ACCOUNT OF STUDY, ILLNESS OR DISABILITY OF A FAMILY MEMBER, ILLNESS OR PREGNANCY, MATERNITY OR PATERNITY LEAVE, VACATION, UNION BUSINESS OR OTHER TEMPORARY LEAVE APPROVED BY THE EMPLOYER.
- PROMOTIONS, DEMOTIONS, OR PAY RAISES.
- TEMPORARY LAYOFF FOR LACK OF WORK.
- STRIKES OR LABOR DISPUTES.
- REINSTATEMENT AFTER DISCIPLINARY SUSPENSION FOR WRONGFUL TERMINATION FOUND UNJUSTIFIED OR OTHERWISE RESOLVED.
- TRANSFER FROM ONE UNIT OF EMPLOYER TO ANOTHER.
- SEASONAL EMPLOYMENT.
- CONTINUING EMPLOYMENT WITH A RELATED, SUCCESSOR OR REORGANIZED EMPLOYER.



**PURGING RULES**



How long must you keep the I-9?

- NEVER PURGE THE I-9 OF AN ACTIVE EMPLOYEE
- PURGE I-9'S ONE YEAR AFTER DATE OF TERMINATION OR THREE YEARS AFTER DATE OF HIRE, WHICHEVER IS LATER.

**SAY WHAT?**

### Photocopying and Retaining Form I-9

1. Enter date employee started work: \_\_\_\_\_  
 Add 3 years to Line 1 A. \_\_\_\_\_

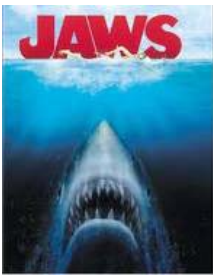
2. Termination date: \_\_\_\_\_  
 Add 1 year to Line 2 B. \_\_\_\_\_

Which date is later: A or B? Enter later date here. C. \_\_\_\_\_

Store Form I-9 until this date.

Figure 8: Form I-9 Retention Calculator

### THE NEW I-9 FORMS AND LIST OF ACCEPTABLE DOCUMENTS



### Form I-9, Employment Eligibility Verification

Department of Homeland Security  
U.S. Citizenship and Immigration Services

OMB No. 1601-0047, Expires 08/31/12

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

**Section 1: Employee Information and Verification** (To be completed and signed by employee at the time employment begins)

Print Name: Last First Middle Initial Middle Name

Address (Street Name and Number) Apt. # Date of Birth (month/year)

City State Zip Code Social Security #

I am aware that federal law provides for imprisonment and/or fines for labor statements or use of labor documents in connection with the completion of this form.

I am a citizen of the United States  
 I am a lawful permanent resident of the United States (see instructions)  
 I am a lawful permanent resident (Alien #)  
 I am authorized to work (Alien # or Alien # and expiration date, if applicable - month/year)

Employee's Signature Date (month/year)

Preparer and/or Translator Certification (To be completed and signed by Section 1 preparer by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature Print Name

Address (Street Name and Number, City, State, Zip Code) Date (month/year)

Anti-Discrimination

Section 1: Employee

Translator/Preparer

Timing Issues

Attention-Perjury!!

Sign/Date

### Most Current I-9 (Cont'd)

**Section 2: Employer Review and Verification** (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

Document Title	List A	List B	AND	List C
Document Title				
Issuing Authority				
Document #				
Expiration Date (if any)				
Document #				
Expiration Date (if any)				

**CERTIFICATION:** I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/year) and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative Print Name Title

Business or Organization Name and Address (Street Name and Number, City, State, Zip Code) Date (month/year)

**Section 3: Updating and Reverification** (To be completed and signed by employer)

A. New Name (if applicable) B. Date of Birth (month/year) (if applicable)

C. If employer's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.

Document Title	Document #	Expiration Date (if any)

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) have been examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative Date (month/year)

Form I-9 (Rev. 08/22/10) Page 4

Section 2: Employer

Certification: Perjury!!

Section 3: Reverification

Expiration

### Most Current List A, B, C

#### LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST A Documents that Establish Both Identity and Employment Authorization	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or territory of the United States provided it contains a photograph or identification number, date of birth, gender, height, eye color, and address	1. Social Security Assured Number card when one that specifies on the face that the issuance of the card does not authorize employment on the United States (Form SS-5193)
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	2. U.S. Military identification card issued by the Department of Defense (Form DD-1176)	2. Certification of Report of Birth issued by the Department of State (Form DS-1303)
3. Foreign passport that contains a temporary I-94 stamp or temporary I-94 printed on the same as a machine-readable immigrant visa	3. U.S. Coast Guard Merchant Mariner Card	3. Native American tribal document
4. Employment Authorization Document that contains a photograph (Form I-766)	4. U.S. Military yard or draft record	4. U.S. Citizen ID Card (Form S-197)
5. In the case of a nonimmigrant alien authorized to work for a specific I-94 printed on the same as a machine-readable immigrant visa	5. Military Department's ID card	5. U.S. Citizen ID Card (Form S-197)
6. Employment Authorization Document that contains a photograph and contains an expiration date, or being in the period of authorization has not yet expired and the prepared employment is to be certified with any notification or notification identified on the form	6. State American tribal document	6. Identification Card for Use of Resident Citizens in the United States (Form I-770)
7. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating temporary admission under the Compact of Free Association Between the United States and the FSM or RMI	7. U.S. Citizen ID Card (Form S-197)	7. Employment authorization document issued by the Department of Homeland Security
8. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating temporary admission under the Compact of Free Association Between the United States and the FSM or RMI	8. For persons under age 18 who are unable to present a document listed above: School record or report card Child, foster, or hospital record Employer or military school record	8. Employment authorization document issued by the Department of Homeland Security

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

New: All documents must be unexpired!

CANNOT HAVE "TAG" LINE

No hospital certificates!

Do Not confuse with List A I-766

### Reviewing Employment Authorization for Current Employees

When an employee's employment authorization document expires, you must re-verify his or her employment authorization no later than the date employment authorization expires. You may use Section 3 of Form I-9, or 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. The employee must present a document that shows current employment authorization, e.g., any document from List A or List C, including an unrestricted Social Security card. If the employee cannot provide you with proof of current employment authorization, you cannot continue to employ that person.

**Jackson|Florida**      **RECORDING NAME CHANGES FOR CURRENT EMPLOYEES**

1. YOU ARE NOT REQUIRED TO UPDATE FORM I-9 WHEN AN EMPLOYEE CHANGES HIS/HER NAME.
2. USCIS "RECOMMENDS" THAT YOU MAINTAIN CORRECT INFORMATION AND NOTE ANY CHANGES IN SECTION 3.
3. THE REGULATIONS DO NOT REQUIRE THAT AN EMPLOYEE PRESENT DOCUMENTATION TO PROVE THE NAME CHANGE.
4. YOU MAY "ASK" THE EMPLOYEE FOR THE BASIS OF THE NAME CHANGE TO BE REASONABLY ASSURED OF THE TRUTH.
5. YOU CAN REQUIRE PROOF OF THE NAME CHANGE FOR PAYROLL PURPOSES, IN ORDER TO AVOID SSA MISMATCHES OR E-VERIFY PROBLEMS (FOR E-VERIFY EMPLOYERS HAVE SPECIAL RULES).

**Jackson|Florida**      **REHIRE SITUATIONS**

IF YOU REHIRE A PERSON WITHIN 3 YEARS OF THE ORIGINAL HIRE DATE, YOU MAY COMPLETE A NEW I-9 OR YOU MAY RELY ON THE PREVIOUSLY COMPLETED FORM I-9 IN CERTAIN CIRCUMSTANCES.

IF THE PREVIOUS I-9 INDICATES THE EMPLOYEE IS STILL ELIGIBLE TO WORK, YOU MAY SIMPLY PUT THE NEW DATE OF HIRE IN SECTION 3.

IF THE PREVIOUS I-9 HAS EXPIRED, YOU MUST REVERIFY IN SECTION 3 WITH THE NEW AUTHORIZATION , OR YOU MAY USE A NEW FORM I-9.

**Jackson|Florida**      **Questions About Documents**

**Q. When I review an employee's identity and employment authorization documents, should I make copies of them?**

A. If you participate in E-Verify and the employee presents a document used as part of the Photo Screening Tool (currently the Permanent Resident Card (Form I-551) and the Employment Authorization Document (Form I-776)), you must retain a photocopy of the document he or she presents. If you do not participate in E-Verify, you are not required to make photocopies of documents. However, if you wish to make photocopies of documents other than those used in E-Verify, you should do so for all employees, and you should retain each photocopy with Form I-9. Photocopies must not be used for any other purpose. Photocopying documents does not relieve you of your obligation to fully complete Section 2 of Form I-9, nor is it an acceptable substitute for proper completion of Form I-9 in general.

**Jackson|Florida**      **Questions About Documents**

**Q. My employee presented me with a document issued by INS rather than DHS. Can I accept it?**

A. Effective March 1, 2003, the functions of the former INS were transferred to three agencies within the new DHS: USCIS, CBP and ICE. Most immigration documents acceptable for Form I-9 use are issued by USCIS. Some documents issued by the former INS before March 1, 2003 such as Permanent Resident Cards, may still be within their period of validity. If otherwise acceptable, a document should not be rejected because it was issued by INS rather than DHS. It should also be noted that INS documents may bear dates of issuance after March 1, 2003, as it took some time in 2003 to modify document forms to reflect the new USCIS identity.

**Jackson|Florida**      **SOME QUESTIONS YOU MAY HAVE ABOUT I-9'S**

**Q. May I fire an employee who fails to produce the required documents within three business days of his or her start date?**

A. Yes. You may terminate an employee who fails to produce the required document or documents, or an acceptable receipt for a document, within three business days of the date employment begins.

**Jackson|Florida**      **SOME QUESTIONS YOU MAY HAVE ABOUT I-9'S**

**Q. If an employee writes down an Alien Number or Admission Number when completing Section 1 of Form I-9, may I ask to see a document with that number?**

A. No. Although it is your responsibility as an employer to ensure that your employees fully complete Section 1 at the time employment begins, the employee is not required to present a document to complete this section.

When you complete Section 2, you may not ask to see a document with the employee's Alien Number or Admission Number or otherwise specify which document(s) an employee may present.

**Jackson|Powell** SOME QUESTIONS YOU MAY HAVE ABOUT I-9'S

**Q.** An employee has attested to being a U.S. citizen or U.S. noncitizen national on Section 1 of Form I-9, but has presented me with Form I-551, Permanent Resident Card, or "green card." Another employee has attested to being a lawful permanent resident but has presented a U.S. passport. Should I accept these documents ?

**A.** In these situations, you should first ensure that the employee understood and properly completed the Section 1 attestation of status. If the employee made a mistake and corrects the attestation, he or she should initial and date the correction, or complete a new Form I-9. If the employee confirms the accuracy of his or her initial attestation, you should not accept a "green card" from a U.S. citizen or a U.S. passport from an alien. Although you are not expected to be an immigration law expert, both documents in question are inconsistent with the status attested to and are, therefore, not documents that reasonably relate to the person presenting them.

**Jackson|Powell** SOME QUESTIONS YOU MAY HAVE ABOUT I-9'S

**Q.** If my employee presents a Social Security card that is laminated or is unsigned, may I accept such a card as evidence of employment authorization?

**A.** It depends. You may not accept a laminated Social Security card as evidence of employment authorization if the card states on the back "not valid if laminated." Lamination of such cards renders them invalid. Metal or plastic reproductions of Social Security cards are not acceptable. You may accept a Social Security card that has not been signed.

**Jackson|Powell** SOME QUESTIONS YOU MAY HAVE ABOUT I-9'S

**Q.** My employee entered a compound last name in Section 1 of Form I-9. The documents she presented contain only one of these names. Can I accept this document?

**A.** DHS does not require employees to use any specific naming standard for Form I-9. If a new employee enters more than one last name in Section 1, but presents a document that contains only one of those last names, the document he or she presents for Section 2 is acceptable as long as you are satisfied that the document reasonably appears to be genuine and to relate to him or her. It is helpful for individuals attesting to lawful permanent resident status who have more than one name to enter their name on Form I-9 as it appears on their Permanent Resident Card (Form I-551).

**Jackson|Powell** Some Questions You May have About Form I-9

**Q.** How do I correct a mistake on an employee's Form I-9?

**A.** The best way to correct Form I-9 is to line through the portions of the form that contain incorrect information, then enter the correct information using red ink. Initial and date your correction. If you have previously made changes on Forms I-9 in White-Out instead, USCIS recommends that you attach a note to the corrected Forms I-9 explaining what happened. Be sure to sign and date the note.

**Jackson|Powell** Some Questions You May have About Form I-9

**Q.** What should I do if I need to re-verify an employee who filled out an earlier version of Form I-9?

**A.** If you used a version of Form I-9 when you originally verified the employee that is no longer valid, and you are now re-verifying the employment authorization of that employee, the employee must provide any document(s) he or she chooses from the current Lists of Acceptable Documents. Enter this new document(s) in Section 3 of the current version of Form I-9 and retain it with the previously completed Form I-9. To see if your form is an acceptable version of Form I-9, go to [www.uscis.gov/i-9](http://www.uscis.gov/i-9).

**Jackson|Powell** PROTECTING YOURSELF IN I-9 PROCESSING

**INTERNAL PROCEDURES THAT CAN HELP PROTECT YOUR COMPANY**

- Designate specific trained personnel to process all Form I-9 completions and maintenance (including E-Verify use).
- Establish a training program for Human Resource personnel as to at least a general knowledge of nonimmigrant and immigrant visa processing and maintenance requirements, including I-9 processing.
- Establish a close relationship between outside immigration counsel and Human Resources personnel to provide a resource for training, counseling on immigration matters, I-9 audits and, if necessary, liaison with DHS personnel.
- Performance of periodic audits of I-9 records by trained internal personnel or, preferably outside professionals.
- Consider the E-Verify Program as an aid to Form I-9 compliance but also be aware of federal and state provisions mandating the use of E-Verify.



**Jackson Lewis** EMPLOYER STEPS TO ENSURE COMPLIANCE

1. Keep I-9 Forms separate from employee personnel files and divide them between current and terminated employees.
2. Keep a roster of all current employees with their date of hire.
3. Keep a roster of all current employees so their Form I-9 can be destroyed when legal to do so.
4. Ensure the use of the current version of Form I-9.
5. Ensure that all documents presented by a new hire are originals, have not expired, and appear to relate to the employee.
6. Make copies of documents presented and attach them to Form I-9.
7. Do not tell the new hire which documents to present.
8. Do not re-verify US passports, passport cards or Permanent Resident or Resident Alien cards nor List B Identity Documents.
9. Re-verify expiring work authorization documents and do not allow an employee to continue to work after the work authorization document has expired.

**Jackson Lewis** EMPLOYER STEPS TO ENSURE COMPLIANCE (continued)

10. If the document presented by the employee is on the List of Acceptable documents, reasonably appears to be genuine and relates to the person presenting it, the employer may accept it to complete Section
11. Require the written three day notice from ICE if it wants to review the I-9 Forms. Contact counsel immediately and reserve a conference room where the I-9 Forms and other documents listed on the notice may be placed for review.
12. Ensure the person reviewing the I-9 Forms signs the Form.
13. Conduct self-audits.
14. If ICE wants to take documents, make a copy of all documents taken.

**Jackson Lewis**

## Take the I-9 Challenge!

Send us a representative sample of your I-9s to review. It won't cost too much and will give you an idea of how you are doing. The current error rate on I-9s is nearly 50%. Can you beat the odds?

**Jackson Lewis**

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