



U.S. DEPARTMENT OF JUSTICE
IMMIGRANT & EMPLOYEE RIGHTS SECTION
CIVIL RIGHTS DIVISION

HOW EMPLOYERS CAN AVOID DISCRIMINATION IN THE FORM I-9 AND E-VERIFY PROCESSES

You (employers) must verify an employee's employment authorization at hire. Employees complete Section 1 of the Form I-9. You complete Section 2, and for reverification or rehire, Section 3 as well. Additionally, if you are enrolled in E-Verify, you must create an E-Verify case for every new hire. **Federal law requires you to follow Form I-9 and E-Verify rules consistently, regardless of an employee's citizenship, immigration status, or national origin.**

S SECTION 1 OF THE FORM I-9: Employee Completes

- Employees do not need to prove their citizenship status. Do not ask any employee for proof of citizenship or immigration status, such as asking an employee who marks "U.S. citizen" to present a naturalization certificate or U.S. passport, or asking a lawful permanent resident (LPR) to present a Permanent Resident Card (PRC).
- Some aliens authorized to work (AAWs) have permission to work that does not expire. These AAWs should write "N/A" in the expiration date field in Section 1. If an AAW whose work permission does not expire shows an Employment Authorization Document (EAD) for Section 2, the AAW should still write "N/A" in the expiration date field.
- The Social Security number (SSN) field is optional unless you use E-Verify. Also, even if you use E-Verify, employees who present sufficient documentation for Section 2 but are waiting for their SSN can begin work for pay.

FREE RESOURCES IF YOU HAVE QUESTIONS

The Immigrant and Employee Rights Section (IER) offers a free hotline if you have questions about how to complete the Form I-9 or E-Verify process in a non-discriminatory manner. Call (800) 255-8155, 9am-5pm ET, M-F (TTY (800) 237-2515). Calls can be anonymous and in any language. For more information, visit IER's website, www.justice.gov/ier.

U.S. Citizenship and Immigration Services (USCIS) has Form I-9 and E-Verify resources, including the Handbook for Employers (M-274), and other educational materials on its Form I-9 website, www.uscis.gov/i-9-central, and on its E-Verify website, www.uscis.gov/e-verify. E-Verify also has an employer hotline: (888) 464-4218.

S **SECTION 2 OF THE FORM I-9: Employer Completes**

- Employees can present any documentation from the Lists of Acceptable Documents: all employees can choose to present either an unexpired List A document, or an unexpired List B document together with an unexpired List C document.
- Do not ask any employee to present specific documents. For example, do not ask an LPR to present a PRC or ask an AAW to present an EAD.
- If an employee presents too many or too few documents, refer the employee back to the Lists of Acceptable Documents to select their choice of one List A document or a combination of one List B document and one List C document. Do not complete Section 2 with more or fewer documents than needed.
- Some receipts are acceptable, for varying lengths of time:
 - » A receipt to replace a lost, damaged or stolen List A, List B, or List C document is valid for 90 days from the first day of work for pay.
 - » A Form I-94 with a temporary I-551 stamp and photograph is valid until the end of the stamp's expiration date, or if no expiration date, one year from the date of issue.
 - » A Form I-94 with a refugee stamp or notation is valid for 90 days from the first day of work for pay.
- Do not reject valid documentation just because it is unfamiliar, or because it is an older version. For example, do not reject valid List C documents, such as a naturalization certificate, Form I-94 with asylum stamp, or Form I-327 Reentry Permit.
- Some employees may have EADs that appear expired, but the EADs may have been "automatically extended" and are still valid. Call IER or USCIS if you have questions.
- Do not reject valid documentation because of an upcoming expiration date.

S **SECTION 3 OF THE FORM I-9: Employer Completes**

- Complete Section 3 when: 1) reverification is required, such as when an employee's temporary work authorization document expires, or 2) in certain cases when you rehire an employee.
- Do not reverify U.S. citizens' documents, U.S. nationals' documents, Permanent Resident Cards, or List B documents.
- Employees can present any valid List A document or List C document for reverification (an employer should not request a List B document for reverification, even if the employee showed one at hire). For example, an AAW who presented an EAD for Section 2 may present an unrestricted Social Security card for reverification.

E **-VERIFY: Employer Uses if Enrolled**

- Use E-Verify consistently and without regard to an employee's citizenship, immigration status, or national origin.
- Do not prescreen applicants by creating an E-Verify case before hire.
- Create a case only after completing a Form I-9.
- Do not request more documents than what the employee already presented for Form I-9.
- Delay creating an E-Verify case in some situations, such as for employees awaiting their SSN and employees who present certain receipts for Section 2. Despite the E-Verify delay, allow them to work just like any other employee.
- Do not create E-Verify cases for employees when performing Section 3 reverification.
- Notify every employee who receives a Tentative Nonconfirmation (TNC). Do not make assumptions about employment authorization based on the TNC.
- If an employee receives a TNC, let the employee decide whether to "contest" or "not contest."
- If an employee contests a TNC, do not fire, suspend, modify a schedule, delay job placement or otherwise take any adverse action against the employee just because of the TNC.
- If you are enrolled in E-Verify as a federal contractor, follow all rules for when and how to create cases for current employees.