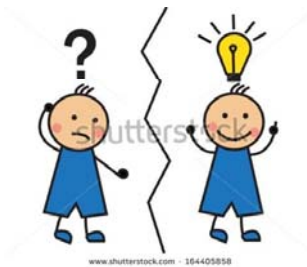


2015 EMPLOYMENT IMMIGRATION LAW & I-9 PRIMER: *TURNING THE DECEPTIVELY DIFFICULT INTO SIMPLY UNDERSTANDABLE*

TORKILDSON
KATZ
MOORE
HETHERINGTON
HARRIS
ATTORNEYS AT LAW
A LAW CORPORATION



Form I-9

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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 you should consult with an attorney well-versed in immigration AND Form I-9 issues

Form I-9

2

Background

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

IRCA forbids employers from knowingly hiring individuals who do not have work authorization in the United States. The net effect is that YOU are the new Border Patrol!

The employment eligibility verification provisions of IRCA are found in Section 274A of the Immigration and Nationality Act (INA).

Form I-9

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Background

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

Form I-9

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Background

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

Form I-9

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Background

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

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

*Actual or perceived

Form I-9

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The Real Issue

Form I-9 is an employment verification tool brought about by **IRCA**.

Form I-9 helps 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.

Form I-9

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COMPLETING THE FORM I-9



Form I-9

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Completing The New Form I-9 03/18/2013 edition

All U.S. employers must have a form I-9 on file for all current employees. **NEW 3/18/2013 VERSION REQUIRED AFTER 05/06/2013**

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.

Form I-9

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Completing The New Form I-9

Mergers and Acquisitions

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

- Treat acquired workers as newly hired employees and complete new Forms I-9
- Consider them as continuing in employment and retain the previous Forms I-9 and retain I-9 liability for any previous mistakes

Under one or two, all acquired employees should be treated the same to avoid discrimination concerns.


What do we recommend? Depends...

Form I-9

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COMPLETING FORM I-9

SECTION 1: EMPLOYEE INFORMATION & VERIFICATION


Employment Eligibility Verification
USCIS
Form I-9
Department of Homeland Security
OMB No. 1615-0047
U.S. Citizenship and Immigration Services
Expires 03/31/2016

▶ **START HERE.** 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 documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)			Apt. Number	City or Town	State	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	E-mail Address			Telephone Number	

- To be completed by EMPLOYEE.**
- Employer MUST verify Section 1 is COMPLETE.**
- New SSN boxes, optional email and telephone number boxes

Form I-9

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Completing Form I-9

Section 1: Important Area – Employee Attestation

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

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: _____ Date (mm/dd/yyyy): _____

3-D Barcode
Do Not Write in This Space

- 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 **first business day** of employment for pay.
- Note expanded questions for Aliens authorized to work!

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Pacific Islanders - “What Box Do I Check?”

- U.S. Noncitizen Nationals
 - American Samoa
 - Swains Island
- Citizens of Pacific Island Nations with Special Status
 - RMI
 - RP
 - FSM
 - CNMI



Completing Form I-9

Section 1: Preparer/Translator Certification

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared 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.

Signature of Preparer or Translator:		Date (mm/dd/yyyy):	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State
			Zip Code

- This certification is required when Section 1 is prepared by someone other than the employee (e.g., translator, parent, guardian, etc.).
- By signing, the preparer is attesting that Section 1 is true and correct to the best of his or her knowledge.
- Note that only the EMPLOYEE can sign the Section 1 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**.

Form I-9

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Completing Form I-9

Section 2: Lists of Acceptable Documents

- You must make the Lists 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. 03/31/2016)
- Note new format in List A, item 5.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	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 outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH THIS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status: a. Foreign passport, and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form		5. U.S. Military card or draft record		5. Native American tribal document
6. 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 nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI		6. Military dependent's ID card		6. U.S. Citizen ID Card (Form I-197)
		7. U.S. Coast Guard Merchant Mariner Card		7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		8. Native American tribal document		8. Employment authorization document issued by the Department of Homeland Security
		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		

Form I-9

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Completing Form I-9

Section 2: Lists of Acceptable Documents

List A Identify and Employment Authorization	OR List B Identify	AND List C Employment Authorization
Document Title:	Document Title:	Document Title:
Issuing Authority:	Issuing Authority:	Issuing Authority:
Document Number:	Document Number:	Document Number:
Expiration Date (if any)(mm/dd/yyyy):	Expiration Date (if any)(mm/dd/yyyy):	Expiration Date (if any)(mm/dd/yyyy):
Document Title:	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> 3-D Barcodes Do Not Write in This Space </div>	
Issuing Authority:		
Document Number:		
Expiration Date (if any)(mm/dd/yyyy):		
Document Title:		
Issuing Authority:		
Document Number:		
Expiration Date (if any)(mm/dd/yyyy):		

The EMPLOYEE MUST provide either:

- One document from **List A** OR
- One document from **List B** AND one document from **List C**

Form I-9 17

Completing Form I-9

Section 2: Documents – Genuineness and Photocopies

- **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
 - Relates 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 and if you participate in E-Verify, you may only accept List B documents that have a photograph*

Form I-9 18

COMPLETING FORM I-9 SECTION 2:

- 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 accused of being in violation of anti-discrimination laws
 - Copies of electronic images of the presented documents must be retrievable consistent with DHS's standards on electronic retention, documentation, security and electronic signatures for employers and employees as specified in 8 CFR Part 27 4a.2(b)(3)

Form I-9

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Completing Form I-9 Section 3: Reverification

Section 3. Reverification and Rehires <i>(To be completed and signed by employer or authorized representative.)</i>		
A. New Name (if applicable) Last Name (Family Name) First Name (Given Name) Middle Initial		B. Date of Hire (if applicable) (mm/dd/yyyy):
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.		
Document Title:	Document Number:	Expiration Date (if any)(mm/dd/yyyy):
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) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative:	Date (mm/dd/yyyy):	Print Name of Employer or Authorized Representative:

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

Form I-9

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COMPLETING FORM I-9

SECTION 3: REVERIFICATION

Do not Reverify

- U.S. Passport or Passport Card
- Permanent Resident Card (Form I-551)
- List B documents

Permanent Resident Reverification Exceptions

- Reverify only if employee presents a Form I-94 with a temporary I-551 stamp, or
- A foreign passport with a temporary I-1551 stamp (on a machine readable immigrant visa (MRIV))

Usually Reverify

- When employment authorization document (List A or C) has an expiration date

Form I-9

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FORM I-9 STORAGE AND RETENTION



Form I-9

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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.
- Segregate Current Employee I-9s from Former Employees's
- Make Forms I-9 available within 3 days of an official request of inspection.
- Electronic Storage – **Proceed Cautiously**

Form I-9

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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 longer.

Form I-9

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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:

Hakuna Matata 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.

Form I-9

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Helpful Hint #1

- Hire a Border Patrol Agent to complete your company I-9 process at time of hire of each new employee

Form I-9

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Helpful Hint #2

- Conduct a Self Audit on August 6, 2015
- Even if you conducted a self-audit in the past year!

Form I-9

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Helpful Hint #3

- Follow Self-audit best practices
- Have Employees correct Section #1 errors or omissions
- Correct Section #2 errors or omissions
- Initial and Date correction (never back-date)
- Create memo re self audit findings and changes.

Form I-9

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Helpful Hint #4

- Conduct Training on I-9 Completion
- Double Check I-9 before Employee starts
- Copy Documents and attach to I-9

Form I-9

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E-VERIFY AND FORM I-9

The logo for E-Verify, featuring a stylized American flag on the left and the text "E-Verify" in blue.

Form I-9

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What is E-Verify



Internet based system

Electronically verifies the employment eligibility of:

- Newly hired employees
- Existing employees assigned to work on a qualifying federal contract

Partnership between **U.S. Department of Homeland Security** and **Social Security Administration**

Form I-9

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What is E-Verify?

E-Verify Goals

- **Reduce** unauthorized employment
- **Minimize** verification-related discrimination
- Be **quick and non-burdensome** to employers
- **Protect** civil liberties and employee privacy

Form I-9

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For More Form I-9 and E-Verify Information

Form I-9 Employment Eligibility Verification

<http://www.uscis.gov/files/form/i-9.pdf>

Form M-274, *Handbook for Employers*

<http://www.uscis.gov/files/natedocuments/m-274.pdf>

E-Verify Website

<http://www.dhs.gov/E-Verify>

Form I-9

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The Nightmare

- The Dreaded ICE I-9 audit
- Have you knowingly hired or knowingly continued to employ an unauthorized alien?
- Have you failed to comply with the employment eligibility verification requirements with respect to employees hired after November 6, 1986?
- Civil Penalties
- Criminal Penalties

Form I-9

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Civil Penalties

- **Hiring or Continuing to Employ Unauthorized Aliens**

1 st Offense	2 nd Offense	Subsequent
Fine of \$375 to \$3,200 for EACH ALIEN	Fine of \$3,200 to \$6,500 for EACH ALIEN	Fine of \$4,300 to \$16,000 for EACH ALIEN

Form I-9

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Civil Penalties – I-9 Errors

I-9 Errors - If you fail to properly complete, retain, and/or make available for inspection Forms I-9 as required by law:

Fine between \$375 and \$3,200 for FIRST violation.

Fine between \$3,200 and \$6,500 for SECOND Violation.

In determining the amount of the penalty, DHS considers:

1. The size of the business of the employer being charged;
2. The good faith of the employer;
3. The seriousness of the violation;
4. Whether or not the individual was an unauthorized alien; and
5. The history of previous violations of the employer

Form I-9

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Range of I-9 Penalties

Substantive / Uncorrected Technical Violation Fine Schedule

Substantive Verification Violations	Standard Fine Amount		
	1st Offense \$110 - \$1100	2nd Offense \$110 - \$1100	3rd Offense + \$110 - \$1100
0% - 9%	\$110	\$550	\$1,100
10% - 19%	\$275	\$650	\$1,100
20% - 29%	\$440	\$750	\$1,100
30% - 39%	\$605	\$850	\$1,100
40% - 49%	\$770	\$950	\$1,100
50% or more	\$935	\$1,100	\$1,100

Form I-9

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“I want a mulligan!”

Opportunities to correct I-9 Errors

- Sonny Bono Amendment
- 10 business days to correct “Technical or Procedural” mistakes
- 10 days AFTER notice by ICE of paperwork failures
- “Substantive” vs. “Technical or Procedural” Errors
- Good faith effort to comply

Form I-9

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Technical Violations

- Section 1
 - Employee omits maiden name, address or DOB
 - No “A Number” in Sec. 1 (but in Sec. 2 or on copy of ID retained with I-9)
 - No Date by employee (hired on or after 9/30/96)
 - Preparer or Translator – no name, address, signature or date

Form I-9

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Technical Violations

- Section 2
 - No title, ID# or expiration date of List A OR List B and List C document (so long as legible copy kept with I-9)
 - Employer – no title, name or address
 - Not dated at all, or dated after deadline
- Section 3
 - When reverification required - no title, ID# or expiration date of List A OR List B and List C document (so long as legible copy kept with I-9)
 - For rehire – no date of rehire

Form I-9

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Substantive Violations

- No I-9 Completed
- Section 1
 - No Name of employee in Section 1
 - Failure to check 1 of 4 boxes indicating citizenship or immigration status
 - No “A Number” (if not in Sec. 2 or on copy of ID retained with I-9)
 - No employee signature
 - No date (if hired before 09/30/1996)
 - Failure of Employer to review and verify documents in Section 2
 - Failure of Employer to sign Section 2 attestation
 - Failure to reverify documents in Section 3

Form I-9

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Substantive Violations

- Section 2
 - Failure of Employer to review and verify documents in Section 2
 - No title, ID# or expiration date of List A OR List B and List C document (and legible copy NOT kept with I-9)
 - Failure of Employer to sign Section 2 attestation
 - Dated after deadline (if hire before 09/30/1996)
 - Failure to reverify documents in Section 3

Form I-9

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Substantive Violations

- Section 3
 - When reverification required - no title, ID# or expiration date of List A OR List B and List C document (NO legible copy kept with I-9)
 - When reverification required – employee fails to sign
 - Failure to date not later than date reverification required

Form I-9

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Immigration Reform in 2015? (or ever?)



Form I-9

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Helpful Hint #5

- Cry
- Quit your job
- Call 911
- or

Form I-9

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The logo for MAHALO is written in a stylized, blue, bubbly font with a white outline and a slight shadow effect.

• (808)961-0406

NEWTON J. CHU
VAUGHN G. T. COOK

Form I-9

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