



HR SOLUTIONS

A people leadership solutions newsletter by HR Service, Inc., (801) 685-8400, www.HRServiceInc.com.

May, 2010

I-9s – ARE YOU READY FOR AN AUDIT?

US Immigration & Customs Enforcement (ICE) announced the issuance of Notices of Inspection to 1,000 employers across the country.

Employers are responsible to obtain a completed I-9 document from all employees, hired after November 6, 1986, to perform labor or services in the United States in return for wages or other remuneration. The purpose of collecting the I-9 form is to document each new employee (citizen and noncitizen) hired after November 6, 1986 as authorized to work in the USA. Employers should make sure they are always using the most current version I-9 and remain diligent in obtaining & updating I-9s on all employees throughout their employment period. Fines for non-compliance can be very costly to employers. In reading the rest of this article, pull out an I-9 form to reference, as each section is covered.

Completing Form I-9

Section 1: “Employee Information & Verification” section needs to be completed and signed by employee at the time employment begins, no later than three days from his/her date of hire.

Employee should:

- complete first & last name, middle initial (if any), & maiden name (if applicable);
- current address, including city, state, & zip code;
- date of birth (MM/DD/YYYY);
- social security, only if employer is using E-Verify;
- read, indicate, & attest current citizenship status statement & provide Alien number & expiration date (if applicable);
- sign & date form; and
- present valid, original, unexpired document(s) to establish identity & employment authorization, to the employer.

Note: If translator is required by employee to complete I-9, translator needs to complete the “Preparer and/or Translator Certification” section, providing all information required.

If employee is under the age of 18, section one is completed by a guardian. In employee “signature field” the guardian should indicate “individual under age 18.” Guardian also completes the “Preparer and/or Translator Certification” section, providing all information required.

Section 2: “Employer Review & Verification” needs to be complete by employer.

Employer should:

- review section one for completeness;
- review documents presented by employee to ensure they satisfy requirements for List A or one each from List B and C;
- validate documents presented are originals, copies are not acceptable;
- verify expiration dates (if any). All documents must be unexpired;
- record document title(s), issuing authority, document number, & expiration date (if applicable), if no expiration date, indicate “no expiration date”;
- if authorization to work document presented contains expiration date, flag I-9 for review on or before expiration date;
- enter first date of employment in certification section;
- attest to documents review by signing & dating employer section; and
- complete printed name, title, & business information section, including address.

Leaders involved in completing or collecting I-9s must be consistent & thorough. Train all managers to follow the same process when completing each I-9.

Maintaining Employment Eligibility

Section 3: “Updating & Reverification” section is completed by the employer and used for reverification of expired work authorization documents, change of name, and date of rehire (if applicable). If section three has already been used in a prior reverification or update, attach a new I-9 form to the original I-9, complete employee name in section one and complete section three of new form.

Reverifying Employment Authorization: is used when an employee's employment authorization expires. If company system capabilities allow, it is beneficial for the employer to set auto reminders for follow-up of expiring documents. Otherwise, establish other methods of review for expiring documents, like a calendar reminder or a monthly review of flagged I-9s.

Employer should:

- reverify employment authorization on or before expiration of previous employment authorization document, and
- collect a document from employee that shows either an extension of initial employment authorization or new employment authorization.

If employee cannot provide proof of current employment authorization (any document from List A or List C) do not continue to employ that person.

Note: Do not reverify an expired US passport or passport card, an Alien Registration Receipt Card/Permanent Resident Card, or a List B expired document, like a driver license.

Rehired: If an employee is rehired, the employer must validate that the employee is still authorized to work. If rehired within 3 years of initial date of hire, the employer can use the original I-9 and reverify using section 3 or they can complete a new I-9.

New Name: If an employee has a name change, record the new name and document title, number, & expiration date (if any).

Accepting & Copying Documents

Employers cannot specify which document(s) they will accept from an employee, as long as documentation is listed in either List A, or one each from List B and C on the I-9 form, & not expired, the document should be accepted. It is okay to give an example of possible documents, like a driver license & Social Security card, one from list B and one from list C.

Although it is not required that an employer copy the documents, it is advised, so you can demonstrate you obtained the documents, if audited. Retain copies with the original I-9 & keep them secure.

I-9 Document Retention

I-9 retention guidelines state “employers must retain completed form I-9 for three years after date of hire or one year after the date employment ends, whichever is later.” This statement can be confusing. In either case, the retention period is driven by termination of employment.

The key to determining one year versus three years is from the date of termination, but takes into consideration the date of hire. As long as an employee is actively working for the company, a valid I-9 should be on file unless the hire date was prior to November, 1986. Upon termination, perform the one year versus three year analysis of the I-9. The greater of the two periods is the retention timeline for the terminated employee's I-9. For example, two employees both hired on April 12, 2006 (Employee A & Employee B):

- Employee A was terminated on Feb 12, 2007. If you retain the I-9 for one year from termination, Feb 12, 2008, the total retention period would only be one year, eight months. This is where the three years comes into play. Because the retention period is less than three years total, you would hold this I-9 until April 12, 2009 to meet the three years from date of hire retention requirement.
- Whereas Employee B was terminated on March 3, 2010. If you retain the I-9 for one year from termination, March 3rd 2011, the retention period would be three years, 11 months. This is greater than three years from the date of hire, so the one year from termination retention guideline would apply in this case.

I-9 Audit & Review

Can you survive an I-9 audit? The true question becomes, “How much are you willing to risk in fines from an audit?”

Keys to surviving an I-9 audit:

1. Develop & implement I-9 manager training & retention programs & guidelines.
2. Train all managers & enforce I-9 processes & procedures.
3. Review all I-9s for thoroughness & completeness at time of hire. Assign I-9 responsibility to one person.
4. Be certain all sections of I-9, both employer & employee, are completed timely (best practice is at time of hire).
5. Track, review, & update expiring employment authorization forms.
6. Randomly perform internal self-audit of all I-9s.
7. Every few years have an audit performed by an external resource.

Employer Resources

- Handbook for Employers (M-274)
- Visit www.uscis.gov or call 1-888-464-4218

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I-9 Audit/Review: Contact HR Service, Inc. for assistance with an I-9 Audit/Review or any HR need at: (801) 685-8400 or Ken@HRServiceInc.com.