Compliance Overview

Highlights

- Employers must verify the identity and employment authorization of every individual they hire by completing and retaining a Form I-9.
- To complete Form I-9, employers must examine employee identity and employment eligibility documents to confirm they are genuine and belong to the person presenting them.
- If a document does not reasonably appear genuine or related to the employee, the employer must not accept it but must allow the employee to present a different acceptable document.

Authenticating Form I-9 Identity and Employment Eligibility Documents

The Immigration Reform and Control Act (IRCA) requires every employer, regardless of size, to hire and retain only individuals authorized to work in the United States. Employers meet this obligation by completing and retaining the Employment Eligibility Verification form (Form I-9) for each employee hired after Nov. 6, 1986.

Central to an employer's Form I-9 compliance obligations is their duty to examine identity and employment eligibility documents an employee presents and to confirm that those documents are genuine and belong to the person presenting them. The federal government has recently increased workplace immigration-related investigations, exposing employers to fines and penalties for violations. Therefore, it's important that employers understand how to properly authenticate employee identity and employment eligibility documents.

This Compliance Overview provides employers with an overview of employer responsibilities for reviewing and authenticating employee Form I-9 identity and employment eligibility documents.

Links and Resources

- USCIS' I-9 Central website
- USCIS' Handbook for Employers M-274

OMS HR Payroll Benefits Workers' Comp

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Form I-9 Overview

Under the IRCA, employers must verify a newly hired employee's eligibility to work in the United States by completing Form I-9. By completing this form, employers certify that they have inspected documents verifying that a newly hired employee is authorized to live and work in the United States. Form I-9 has two sections. The first is completed by the employee, and the second is completed by the employer. The earliest an employer can ask a new hire to complete Section 1 of Form I-9 is after an offer of employment is extended and accepted. The latest by which a new hire can complete Section 1 is the end of the employee's first day of work for pay. Employers cannot use Form I-9 as part of an applicant's screening process or background check. Employers can hire an outside business or contractor to verify a newly hired employee's identity and employment eligibility, but the employer is ultimately responsible for the business's or contractor's actions and the employee's employment eligibility.

Employers must make the Form I-9 instructions and List of Acceptable Documents available to their employees. All employees must provide original documents verifying their right to live and work in the United States for physical examination and sign a verification form (Form I-9). If an employee cannot verify their right to work within three business days of their first day of work for pay, the employer must not permit that individual to work and can terminate the individual's employment or place them on unpaid leave. Employers may also be required to reverify an employee's employment eligibility under certain circumstances.

Form I-9 Document Authentication

Presenting Identity and Employment Eligibility Documents

Section 1 of Form I-9 must be completed by the newly hired employee no later than their first day of employment. When completing Section 1, employees must provide original, unexpired documents from the List of Acceptable Documents approved by the U.S. Citizenship and Immigration Services (USCIS) that verify their identity and employability. Employers may accept documents only from Lists A, B and C. Documents from List A establish identity and employment eligibility, documents from List B establish identity only and documents from List C establish employment eligibility only. Employers must accept either one document from List A or a combination of one document from List B and one document from List C. Employers cannot dictate or request that employees provide specific documents from the List of Acceptable Documents. Asking employees to show a specific document when completing Form I-9 violates the IRCA's document-abuse provisions. Employers found to have violated the IRCA's document-abuse provisions may be required to hire or reinstate employees, with or without backpay, pay civil penalties or end discriminatory practices.

Employees may present receipts in lieu of certain documents for a temporary period, unless their employment will last less than three business days. New employees who choose to present a receipt must do so within three business days after their first day of employment. For reverification of existing employees, they must present a receipt by the date their employment authorization expires.

Reviewing and Verifying Identity and Employment Eligibility Documents

Employers must complete and sign Section 2 within three business days after the employee's first day of work for pay. To complete Section 2, employers must verify specific documents listed in the form. Reviewing these documents allows an employer to verify their new employee's identity and employment eligibility. Employers must document their review and verification of these documents on the form.

Employers, or their authorized representatives, must:

- Ensure that any document the employee presents is on the List of Acceptable Documents or is an acceptable receipt;

- Physically examine each document to determine if it reasonably appears to be genuine and to relate to the employee presenting it. If employers reject a document, they must allow the employee to present other documentation from the List of Acceptable Documents;
- Record the document title, issuing authority, number(s) and expiration date (if any) from the original document(s) the employee presented;
- Enter the date the employee began or will begin working for pay;
- Provide the name, signature and title of the person completing Section 2, as well as the date they completed Section 2;
- Record the employer's business name and address—if the employer has multiple locations, they can use the most appropriate address that identifies the location of the employer with respect to the employee and their completion of Form I-9 (e.g., the address where Form I-9 is completed); and
- Return the documentation presented to the employee.

The person who physically examines the employee's documents must sign the attestation in Section 2 under the penalty of perjury.

Employers may terminate any employee who cannot present the necessary documents within three business days of hire or place them on an unpaid leave of absence. If an employer chooses to place an employee on an unpaid leave of absence, the employer may terminate the employee if they are unable to produce identity and employability documents at the end of their leave.

Additional requirements apply when reverifying an employee's work authorization document that has expired and when rehiring employees.

Authenticating Identity and Employment Eligibility Documents

Employers satisfy their document-examination duty by determining whether each document an employee presents reasonably appears to be genuine and relates to the person presenting it. While employers are not expected to be document experts, they are expected to accept documents that reasonably appear to be genuine and relate to the person presenting them. If a document does not reasonably appear genuine or related to the employee, the employer must not accept it. However, the employer must allow the employee to present a different acceptable document from the List of Acceptable Documents instead.

A minor discrepancy does not automatically mean that the document is not genuine or related to the employee. For example, if the name of the document the employee presents is spelled slightly differently from the name they entered on the form, the employer should still accept the document if it otherwise appears genuine and related to the employee, and the employee has a reasonable explanation for the variation. In situations where an employee presents two documents, each containing a different last name, and the employee explains that they have just gotten married and changed their last name but have not yet changed the name on one of the documents, the employer may accept the document with the different last name if it reasonably relates to the employee. Employers may request supporting documentation for a name change and attach an explanatory memo to the Form I-9. However, treating a name discrepancy alone as grounds for rejection can constitute an IRCA violation.

If an employee presents a document that does not appear genuine or related to the employee, the employer can take the following steps:

- Do not accept the document. Accepting a document that the employer has determined does not reasonably appear to be genuine or related to the person presenting it constitutes an IRCA violation;
- Document the specific, nondiscriminatory reason for the rejection;
- Inform the employee of the issue and give them the opportunity to present a different, acceptable document from the List of Acceptable Documents. Rejecting a document without offering this opportunity can violate of IRCA; and
- Do not treat the rejection as, by itself, grounds to withdraw the employee's job offer or end their employment. The employee still has until the end of the three-business-day window (or the first day of work, if the job will last fewer than three business days) to present acceptable documentation.

At the end of the three-business-day window, if the employee has not presented an acceptable document (and no valid receipt applies), the employer may decline to permit further work and terminate the employment relationship or place the employee on unpaid leave. If the employer is unfamiliar with the document type presented by the employee, they should contact the USCIS' Contact Center before rejecting the document. Unfamiliarity with a valid but less common document is not, by itself, a basis to reject it.

Employers must apply the same standard to every employee when authenticating employee documentation. Rejecting documents from some employees but not others can violate federal law.

Remote Examination of Identity and Employment Eligibility Documents

As a general rule, document examination must occur in the employee's physical presence. However, since Aug. 1, 2023, employers participating in the federal E-Verify program in good standing with respect to all hiring sites may use an alternative procedure to remotely examine Form I-9 documents through live video interaction.

To examine employee documents remotely, the employer must complete the following steps:

- Examine copies (front and back if the document is two-sided) of Form I-9 documents or an acceptable receipt to confirm the documentation reasonably appears genuine;
- Conduct a live video interaction with the employee, presenting the documents to ensure the documentation reasonably appears genuine and are related to the individual. The employee must first transmit a copy of the documents to the employer and then present the same documents during the live video interaction;
- Mark the corresponding checkbox in Section 2 of Form I-9, indicating the alternative procedure was used to examine documentation; and
- Retain clear, legible copies of the documentation examined.

Acceptable Receipts

Employers must accept certain receipts in place of a List A, B or C document, unless employment will last fewer than three business days. Employers may only accept the following receipts:

- A receipt showing that the employee has applied to replace a List A, B or C document that was lost, stolen or damaged;
- Form I-94 issued to a lawful permanent resident that contains an I-551 (ADIT) stamp and a photograph of the individual; or
- Form I-94 with "RE" notation or refugee stamp issued to a refugee.

When an employee provides an acceptable receipt for initial verification, the employer must enter the word "receipt" followed by the document title in Section 2 under List A, B or C, as applicable. When the employee later presents the

original replacement document, the employer should cross out the word "receipt" on the Form I-9, enter the new document's information in the Additional Information field of Section 2, and initial and date the change. Employers may not accept a second receipt after the initial receipt's validity period ends.

Employees may present an acceptable receipt to show they have applied to replace a lost, stolen or damaged List A, B or C document. The receipt is valid for 90 days from the date of hire or, for reverification, 90 days from the date employment authorization expires. At the end of the receipt period, employees must present the actual replacement document or other Form I-9 documentation from the Lists of Acceptable Documents. If the employee presented different but acceptable documentation for a lost, stolen or damaged document, the employer must complete a new Section 2 and attach it to the original Form I-9. In the Additional Information box, the employer should explain the reason documentation other than the replacement document was presented (e.g., document delays, changes in status or other factors) and then sign and date the note.

Using an Authorized Representative

Employers may use an authorized representative, such as a personnel officer, agent, foreman, bank representative or notary public, to complete the document examination and Section 2 on the employer's behalf, including for employees working remotely. The authorized representative must perform all the employer's duties, including authenticating identity and employment eligibility documents. Employers are liable for any violations in connection with the form or verification process committed by the authorized representative acting on the employer's behalf.

Employer Takeaway

Form I-9 requirements apply to all employers. Reviewing and verifying identity and employment eligibility documents is often an area of greatest compliance risk. As enforcement actions continue to escalate, Form I-9 compliance is especially vital. To minimize risk, employers should regularly review their policies and procedures for examining and authenticating Form I-9 identity and employment eligibility documents. While strategies for implementing effective documentation reviewing procedures may vary based on the employer's size and workforce distribution, applying a consistent and disciplined verification procedure can strengthen an organization's compliance efforts and limit legal exposure.