



Form I-9

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Background:

All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States. This includes citizens and noncitizens. The purpose of this form is to document that each new employee (both citizen and noncitizen) hired is authorized to work in the United States. Form I-9s are available in English and Spanish at: <https://www.uscis.gov/i-9>. You must have the latest version of the free Adobe Reader to download Form I-9. The current form has a revision date of 11/14/2016 (located in the bottom left corner) and an expiration date of 08/31/2019 (located in the top right corner). Do not file Form I-9 with any government agency. Form I-9 must be kept on file by the employer. There are no fees to the employer. NOTE: The Spanish version of Form I-9 may be completed by employers and employees in Puerto Rico ONLY. Spanish-speaking employers and employees in the 50 states and other U.S. territories may print this version for their reference, but may only complete the form in English to meet employment eligibility verification requirements.

2017 Enhancements:

The revised Form I-9 has been made easier to complete on a computer. Enhancements include drop-down lists and calendars for filling in dates, on-screen instructions for each field, easy access to the full instructions, and an option to clear the form and start over. When the employer prints the completed form, a quick response (QR) code is automatically generated, which can be read by most QR readers. Other changes include the addition of prompts to ensure information is entered correctly; the ability to enter multiple preparers and translators; a dedicated area for including additional information rather than having to add it in the margins; and a supplemental page for the preparer/translator. The instructions have been separated from the form, in line with other USCIS forms, and include specific instructions for completing each field.

Completing the Form:

Section 1 of the Form I-9, Employee Information and Verification, must be completed **no later than the first day of employment**. However, this section should never be completed before the employee has accepted a job offer. An employee can be either a citizen or "noncitizen national" of the United States. Noncitizen nationals are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad. More information on noncitizen nationals can be found on the Department of State website at: http://travel.state.gov/law/citizenship/citizenship_781.html. Employers should note the work authorization expiration date (if any) shown in Section 1. For employees who indicate an employment authorization expiration date in Section 1, employers are *required* to reverify employment authorization for employment *on or before the date shown*. Providing a Social Security Number is voluntary. However, if the employer participates in E-Verify, then employees must provide Social security numbers. Section 1 contains a Preparer/Translator Certification. This must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his or her own. *However, the employee must still sign Section 1 personally*. There is space for the employee's email address and telephone number. Both of these are optional.

The employer completes Section 2, Employer Review and Verification, of the Form I-9. Page 9 of the Form I-9 instructions contains Lists of Acceptable Documents to establish identity and employment authorization. *Employers cannot specify which documents an employee should present*. Employees may present any List A document *OR* a combination of a List B and a List C document. In Section 2 of the form, Employer or Authorized Representative Review and Verification, List A now has space for including three documents. This may be confusing because, clearly, according to the instructions, employees must present one selection from List A *OR* a combination of one selection from List B and one selection from List C. The explanation is that some List A documents are actually combination documents. The employee must present combination documents together to be considered a List A document. For example, a foreign passport and a Form I-94 containing an endorsement of the alien's nonimmigrant status must be presented together to be considered a List A document. Hence, the added space.

On the List of Acceptable Documents, under List C. point 1., there are three restrictions for the use of social security cards that, when included on the card, render that social security card an INVALID document for completing the I-9: 1) Not Valid for Employment; 2) Valid for Work Only with INS Authorization; and 3) Valid for Work Only With DHS Authorization. Also in Section 2, employers must record: the document title, the issuing authority, the document number, the document expiration date (if any) and the date employment begins. Employers must sign and date the certification in Section 2. Section 3, Updating and Reverification, is completed by the employer upon the rehiring of a former employee or when a previous grant of work authorization has been expired. Employers also have the option of completing a new Form I-9 instead of completing Section 3.

Recordkeeping Requirements:

Employers must keep I-9 Forms for all current employees. It is generally considered a bad idea to keep the Form I-9 records with personnel records as this could compromise the privacy of employees by allowing government inspectors to review items during an audit that are completely unrelated to the Form I-9. **NOTE:** While retaining copies of the supporting documents is voluntary, there are pros and cons to doing so: On the one hand, some would argue that maintaining copies of documents leaves an unnecessary paper trail for government inspectors. On the other hand, maintaining documentation could provide a good faith defense for an employer in showing that it had reason to believe a worker was authorized even if the paperwork was not properly completed. *Whatever an employer decides, it is of the utmost importance to be consistent: Keep copies of documents for every employee or keep none of them*, since keeping copies only for certain employees could open the employer up to charges of discrimination. An employee who fails to produce the required document(s) or a receipt for a replacement document(s) (in the case of lost, stolen or destroyed documents) within three business days of the date employment begins can be terminated. These practices must be applied uniformly to all employees. If an employee has presented a receipt for a replacement document(s), he or she must produce the actual document(s) within 90 days of the date employment begins.

Upon termination of employment, employers should calculate two dates: The first is the date three years from the date of the employee's date of hire. The second is the date one year from the termination date. *The later date is the date until which the Form I-9 must be retained.* **Example:** An employee is hired on May 1, 2013. He terminates his employment on October 1, 2015. Using the formulas above, we calculate the two dates as May 1, 2016 and October 1, 2016. The date on which this employee's I-9 should be destroyed is October 1, 2016. It is a good idea to establish a "tickler" system to destroy forms no longer required to be retained.

If You Are Audited:

If you receive a notice of inspection from the Department of Homeland Security, you are usually able to request three days to prepare for the audit. (If a subpoena or warrant is issued, the three day rule is not valid.) Take advantage of the option of taking the documents to the local DHS office as opposed to scheduling a farm visit. While this may be difficult, take the time to travel to the regional office rather than inviting an inspector to your farm. You will be asked for a list of employees. Instead of providing payroll records, which will give DHS additional information about your business, simply type up a list of all employees along with the information required by the inspection notice. The agent may request to take your original documents. Request a receipt and keep a copy if this occurs. It is advisable to contact a qualified attorney to assist you with this preparation. Finally, you would do well to conduct a self-audit to identify and correct problems, where possible, prior to receiving an actual audit notice.

What is E-Verify?:

E-Verify is a free, voluntary, internet-based system that allows employers to confirm the legal working status of **new** hires by matching a new hire's Social Security Number and other Form I-9 information. E-Verify is *not* a pre-employment screening tool and cannot be used to check the status of an existing employee. Employers with as few as one employee can register for participation in E-Verify at: <https://e-verify.uscis.gov/enroll/>.

Please Note: Upon logging in for the first time, users will be required to complete a one-time 20-minute tutorial. The system will be inaccessible until you do so; users' existing IDs and passwords will not change.

IMPORTANT NOTE: This information is a general overview of the legal issues discussed herein and should not be considered legal advice. Readers are urged to consult with legal counsel for precise answers to individual questions and the application of these legal principles to their individual situations. NYF B's Legal Affairs Department, 518-431-5628, can refer members to an attorney who specializes in immigration issues. General Information on immigration laws, regulations and procedures can be obtained by telephoning the Department of Homeland Security National Customer Service Center at 1-800-375-5283 or by visiting www.uscis.gov. New York Farm Bureau's *Farmer's Guide to Labor and Employment Laws* and *Farmers Guide to ICE and Immigration Law Enforcement Activities: An Employer's Rights and Responsibilities* are available by calling Member Support at 1-800-342-4143.