

I-9 REPORTING Q&A

Q. Because we have company vehicles, we currently require employees to provide a valid license. Is this OK?

A. No. Employers are not permitted to tell employees what documents to provide, as USCIS considers this to be discriminatory. For employers with company vehicles, the need to obtain documentation of a valid driver's license is separate from the documentation required for the Form I-9.

Q. Are employers required to trace out when permanent residents' cards are expired?

A. Employers are not permitted to employ people with expired documentation establishing their eligibility to work, so a best practice would be to track expiration dates for permanent resident cards. E-Verify also tracks expired documentation.

Q. Are you required to complete a new I-9 for a rehire if they are rehired within three years? Or can you just keep the existing one on file?

A. Employers are permitted to use Section 3 to re-verify former employees who return within three years of the date the original Form I-9 was signed.

Q. Can I use the electronic form, if I will only type in our company information and the employee will hand-write their information and so will the company representative?

A. Yes.

Q. Can the I-9 be sent with the HR packet after the applicant has verbally accepted but we have not received their signed contract yet?

A. Yes, but you should instruct the employee to complete Section 1 of the Form I-9 after they have signed their offer acceptance.

Q. Can you clarify, do copies of the documents that employee is providing need to be retained?

A. The rules do not require employers to retain copies, but if you do you must retain for all employees. Retaining copies as documentation is considered to be a best practice.

Q. Can you have employee fill out I-9 paperwork 1 month before working their first shift? (New business opening/orientation before actual start day, etc).

A. Yes. An employee may complete Section 1 of the Form I-9 after accepting an offer of employment prior to their first actual day worked.

Q. Could you give a new hire an example of what forms they could bring, for example birth certificate and ID card? Or you are saying that is a no go now?

A. Employers are permitted to provide the A, B, and C lists of documents. Employers are not permitted to suggest or require what documents to provide.

Q. Do we have to re-verify when identification documents expire? Or only work authorization?

A. Documents establishing identity do not have to be re-verified, only documents that establish eligibility to work must be re-verified following expiration.

Q. Do we use the new form even for the rehire section too?

A. Yes.

Q. Do you have a template for an Employer I-9 process that we could use as a starting point?

A. An I-9 “cheat sheet” is being provided with this FAQ.

Q. Do you have to have complete section 3 re-verification if a driver's license was used upon hire and is now expired?

A. No. Only documents that establish eligibility to work must be re-verified following expiration.

Q. Do you have to keep hard copies of every employee or can you scan them and put them in a private file on the computer?

A. No. Electronic copies are permissible.

Q. Does N/A need to be populated in blank spaces on a handwritten document, or does it only apply if filled out on the computer?

A. Follow the Form I-9 instructions when determining if a field can be blank or if N/A is required. The instructions state when an employee may use N/A or must use N/A. Required fields must be completed with either the information requested or N/A.

Q. Does section 3 any time an employee has a name change or just if they are rehired?

A. You may complete Section 3 of the previously completed form or a new Form I-9 and attached it to the old form with a written explanation of what happened. See page 23 of the *Handbook for Employers* (M-274) for more detailed information.

Q. Does the SS card need to be signed to be valid?

A. A signature on the card is not required for the card to be valid. You may accept an unsigned Social Security card as long as the card reasonably appears to be genuine and to relate to the person presenting it.

Q. For existing employees, should I go through files to look for potential I-9 issues or Green Card expirations?

A. A best practice would be to conduct an audit of active employees, reviewing forms for timely completion and having proper A or B and C list documents.

Q. For individuals with disabilities who are unable to produce any of the listed identity documents, how do you handle E-Verify?

A. A representative of a nonprofit organization, association or rehabilitation program; parent; or legal guardian may establish identity for an individual being placed into employment by a nonprofit organization or association or as part of a rehabilitation program (such as a special placement program) if the individual cannot provide a List B document. <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/complete-section-1-employee-information-and-verification/disabled-employees>.

Q. How do you handle remote office employees or telecommuting employees that work from home in another state? How can you view their original documents?

A. You may designate an authorized representative to fill out Forms I-9 on behalf of your company, including personnel officers, foremen, agents or notary public. The Department of Homeland Security does not require the authorized representative to have specific agreements or other documentation for Form I-9 purposes. If an authorized representative fills out Form I-9 on your behalf, you are still liable for any violations in connection with the form or the verification process.

When completing Form I-9, you or an authorized representative must physically examine each document presented to determine if it reasonably appears to be genuine and relates to the employee presenting it. Reviewing or examining documents via webcam is not permissible.

Q. I came into a company 6 years ago and they never had a HR department. There were a few I-9s completed and some were not. I immediately did an I-9 audit and reverified and completed I-9s. I documented that this took place and keep the documentation in my I9 book. Is this a correct procedure?

A. Yes.

Q. If an employee's documentation expires during their employment, does a reverification need to be completed?

A. Only documentation establishing eligibility to work. Essentially List C documents.

Q. If someone has worked for us longer than 3 years can we destroy their I-9?

A. Not for current employees. As an employer you can destroy old I-9s and supporting documents, but not for current employees. Once an employee has been termed (or retired, resigned, and so forth), you must keep the I-9 on file for the longer of one year from the date of termination, or three years from the date of hire.

Q. If someone signed the I-9 after the first day, do they need to complete a new I-9 since they can't correct the date signed?

A. No. There is technically no "cure" for an I-9 that was signed late. USCIS suggests that employers attach a memo to the late-signed I-9 that sets out the company's policy to comply with the I-9 rules.

Q. If the hire completed their part of the I-9 before the 22nd on the old form, but will not start work until after the 22nd; do they need to complete a new version of the form?

A. No. If the I-9 was started before the cutoff, it can be completed.

Q. If we hired employees this week with the old form, do we need to go back and have them fill out the new I-9 form?

A. No.

Q. If you have an employee who has been with the company forever and their documents have expired, do you need to do a new I-9 each time the documents expire?

A. No. Only documents that establish eligibility to work must be re-verified following expiration.

Q. If you have repeated mistakes can you just make copies of the memo or does it need to be original for each I-9?

A. It is permissible to use a copied memo, although an individualized memo would likely look better to an auditor.

Q. Is a new I-9 required when an employee has a name change or is it just suggested?

A. It is not required.

Q. Is electronic copy filing only acceptable or is it necessary to keep the paper copy as well? We currently keep both and would like to do only electronic.

A. Paper copies are not required.

Q. Is there a cost for E-Verify?

A. No. E-Verify is free.

Q. Is there any harm in doing an update for all employees I-9 forms with the new form?

A. No.

Q. Is it better to correct the mistakes on I-9's, or is it better to have the employee fill out a new one correctly?

A. Both are acceptable.

Q. On List C, if the SS card is used, is it required to use N/A in the expiration date or leave blank? We've had an attorney review and NA was not indicated, however on page 11 of 15 in the Form I-9 instructions it appears the directions say yes to include N/A. What has been your experience?

A. The I-9 instructions state that if the document has no expiration date to enter N/A in the expiration date field. SSN cards do not have expiration dates.

Q. On Section 1, what if the employee signs section 1 but dates it using their birth date instead of actual date?

A. Best practice is to draw a line through the incorrect date and enter the actual date (not back dating). Attach a memo explaining the error and the correction.

Q. Please give us a link for the new form.

A. <https://www.uscis.gov/i-9>.

Q. When an employee's driver's license expires we need to do a fresh I-9?

A. No. Only documents that establish eligibility to work must be re-verified following expiration.

Q. We "hire" independent contractors and collect I-9s on each one. How does the new form differ for an independent contractor than an "employee"?

A. Independent contractors or individuals providing labor to you if they are employed by a contractor providing contract services (for example, employee leasing or temporary agencies) are not required to complete I-9s.

Q. We have a predominately Amish population of workers who do not have "photo" IDs per their religious freedom. Can we accept a state ID that is photo exempt?

A. Yes. Non-photo state-issued IDs are acceptable List B documents for the I-9.

Q. What are the best retention practices? Split between active I-9's and I-9's where employees have terminated? Also are I-9's kept in the EE's file after they terminate? Or can/should the I-9's be destroyed at some point?

A. When an employee is terminated, organizations should pull his or her Form I-9 from the active employee file and determine retention requirements before filing in a terminated Form I-9

binder or file and retain the I-9 until for at least one year after termination or three years after date of hire.

Q. What if documents don't appear as genuine, for example, the social security card is not the right color, text looks off?

A. If the document does not reasonably appear to be genuine, reject the document and ask your employee to provide other document(s) that satisfy Form I-9 requirements.

Q. What if section one was completed on first day, but employee forgot a second form of ID and did not return back to work on day 2?

A. Only Section 1 must be completed by the end of the first day. The documentation for Section 2 must be reviewed and the section completed within three days of the employee's first day of work.

Q. What if you have an employee who only works for one day and then does not show up after the first day? The employer was not able to appropriately complete section 2.

A. You can pay the employees as contract labor, providing they worked just a day. The informal rule of thumb in the past has been that the employees could be paid for 3 days or less, as contract labor, although we are not aware of any statute that specifies this.

The best practice is to have the employee come in for an hour or two, a few days before the first scheduled shift, to fill out the new hire paperwork including the I-9 and W-4. You cannot require applicants to fill out this paperwork, but you can require that the employee complete it before his or her first hour of work, as long as they have been offered the job and accepted it. If the employee does not fill out the paperwork completely, then you can delay the actual start date until the employee has completed the necessary paperwork.

Q. What kind of information should not be put in the additional information box?

A. The new optional box entitled "Additional Information" should be used to notate any information related to Form I-9, such as employment authorization, E-verify case numbers or employee termination dates.

Q. You've mentioned printing, but can the I-9 be completed online?

A. According to the General I-9 Instructions on page 1, I-9 forms obtained from the USCIS website are not considered electronic I-9 forms by DHS and cannot be electronically signed. This means that a hardcopy must be printed off and physically signed. Once signed, the forms may be scanned and stored electronically.

Q. Can employers sign off on their portion of the I-9 before their hire date when the employee fills out their portion?

A. If the employee has accepted an offer of employment, Sections 1 and 2 can be completed prior to the first day of work.

Q. Do these new forms need to be sent in to someone or just keep them on file?

A. I-9 forms should be kept on file at the employer's in case of federal agency audit.

Q. Do we need to include the instructions with the I-9's when we file it away?

A. No.

Q. Do you need to write a memo each time you accept a birth certificate for a woman who is married and took her spouse's name?

A. No. Section 3 re-verifications are optional for name changes.

Q. For section 3, does that mean we should be monitoring document dates, and updating any time they expire?

A. Yes. However, only documents that establish eligibility to work must be re-verified upon expiration. Documents establishing identity do not need to be re-verified.

Q. I thought you were not to take copies of these and that you are just to verify it?

A. Correct. You should return original documents and keep copies.

Q. If someone has a legal name change, do you have to complete section 3 or can you have them complete a new I-9?

A. No. Section 3 re-verifications are optional for name changes.

Q. If the SS Card looks good at the time of hire but you become aware that the number may not belong to them what should I do? Make them provide new documentation from the Social Security Admin?

A. An employers should start by submitting the IRS Forms W-2c and W-3c to correct any wages reported in error to someone else's Social Security number. The employer may also need to file amended employment tax returns, such as the 941-X; alert your accounting department to ensure proper forms are filed. The employee should be advised that tax consequences may arise if he or she did not pay appropriate taxes, and the employee should seek tax advice on filing amended returns. In terms of reporting these employees to the authorities, legal guidance should be sought.

Q. My company is in Illinois but we have employees that live in Indiana. Do we have to use E-Verify since they live in Indiana?

A. No. Site of employment and not state of residence determines E-Verify usage.

Q. We have two companies and often have employees transfer from one company to the other. We currently do not do a new I-9, as they are just transferring. Should we be doing this when we have a new transfer as if they are a new hire for the company?

A. I-9's are not required for transfers from one distinct unit of an employer to another distinct unit of the same employer (in which case the employer may transfer the individual's Form I-9 to the receiving unit).

Q. We have a number of I-9's that may or may not have been completed correctly prior to the current HR management. If we have done a self-audit and found missing IDs, etc., are we allowed to have current employees (even if hired 10 years ago) complete the I-9 again?

A. Yes. It is suggested that you attach the new I-9 to the old I-9 along with a memo explaining the correction.

Q. We recently started making copies of I-9 documents for new employees, whereas we did not do this previously. We did not have an official memo with the date we started doing this. Should we require all existing employees to provide documentation or what is the best practice?

A. The best practice in this instance would be to draft a company memo detailing when the change in documentation practice took place. It is permissible to keep copies of documentation going forward.

Q. What do I put in the citizenship/immigration status box?

A. In Section 1, the employee must attest to their citizenship or immigration status by checking the appropriate box. If they attest to 'Alien authorized to work,' they may provide EITHER their Alien Registration number OR their Form I-94 Admission Number. If they choose to provide an Alien Registration Number, they do not have to enter their Foreign Passport and Country of Issuance information.

Q. What if an employee was recently married and does not have updated SS card or Driver's License yet?

A. You may accept a document with a different name than the name entered in Section 1 provided that you resolve the question of whether the document reasonably relates to the employee. You also may wish to attach a brief memo to I-9 stating the reason for the name discrepancy, along with any supporting documentation the employee provides.

Q. What if the back of the social security card has obvious grammar and/or spelling errors?

A. If the document does not reasonably appear to be genuine, reject the document and ask your employee to provide other document(s) that satisfy Form I-9 requirements.

Q. Who can complete Section 2 if the new hire is working remote and does not have contact with other employees?

A. You may designate an authorized representative to fill out Forms I-9 on behalf of your company, including personnel officers, foremen, agents or notary public. The Department of Homeland Security does not require the authorized representative to have specific agreements or other documentation for Form I-9 purposes. If an authorized representative fills out Form I-9 on your behalf, you are still liable for any violations in connection with the form or the verification process.

Q. Should I-9's be kept separate from employee files – in Active I-9 notebooks and termed I-9 notebooks?

A. Either is acceptable.

Q. Do we have to have the original form or is a copy OK? We have facilities all over the US, and we house all the forms here in South Dakota.

A. You are permitted to use a method that suits your business needs.

Q. Does a temporary driver's license that was recently renewed work for verification?

A. A state-issued temporary driver's license is an acceptable I-9 List B document if it contains a photograph or identifying information such as name, date of birth, gender, height, eye color, and address. Any conditions on the temporary driver's license, such as that the expired license must accompany the temporary driver's license for it to be valid, must be followed.

Q. If there's a rehire and his previous I-9 is still within the 1 or 3 year rule but it's the previous I-9, can we fill out the rehire section of the newest I-9 version and attach it with his previous I-9? Or is there a different process?

A. No. You must either use Section 3 of the original I-9 if it is within the 3 year rule or use a new I-9. The rules do not permit combining I-9s.

Q. Retention is required only after they leave the organization, correct? You need to keep them as long as someone is still employed, no?

A. Correct.

Q. What if the form was filled out incorrectly before I started working here?

A. If the form is for a current employee, best practice is to cure the failure. Forms for former employees are generally not a priority.

Q. We have stores in multiple states so we have store managers verifying IDs and completing the employer section since they are the ones who can actually verify the new hire standing there is the person on the IDs. Is that OK?

A. Yes.

Q. What about an ID card from a prison/jail?

A. The B List of acceptable documents includes ID cards issued by federal, state, or local government agencies or entities.

Q. Does the list of acceptable documents need to be kept with the I-9 forms for employees?

A. No. They must be provided to the employee along with the I-9 form when it is completed, but does not need to be kept on file.

Q. For E-Verify, if we have stores in the mandatory states where the person actually works, but the corporate office is in TN, do we need to be using E-Verify? If so, then do we have to use it for all employees in all of our other states to be consistent?

A. E-Verify only has to be used for employees actually working in mandatory use states.

Q. We use an online onboarding program; it doesn't complete I-9 sections separately. It's an all or nothing submittal. Does this mean that I always have to get the I-9 done on their start date?

A. It would seem so, unless you can send the I-9 separately.

Q. I am not understanding the retention part of I-9s... so we need to complete I-9s for all employees... But only have to keep the document after 3 years from start date for current employees and only have to keep I9 for 1 year after termination, after those times I can shred the I-9?

A. You must complete and retain an I-9 for all current employees. The forms must be kept after termination for the later of 1 year after termination or 3 years from the date the employee started work.