



Office of Special Counsel for Immigration-Related Unfair Employment Practices

U.S. Department of Justice Civil Rights Division

How Employers Can Avoid Discrimination in the Form I-9 and E-Verify Processes

You (employers) must verify the employment eligibility of all employees hired after November 6, 1986, through the use of the Form I-9. Employees complete Section 1 of the Form I-9. You complete Section 2, and for reverification or rehire, Section 3 as well. Additionally, if you are enrolled in E-Verify, you must create an E-Verify case for every new hire by entering the employee's Form I-9 information into E-Verify. You can only create E-Verify cases for current employees if you are enrolled in E-Verify as a federal contractor. Federal law requires you to follow Form I-9 and E-Verify rules consistently for all employees, regardless of their national origin, citizenship status, or immigration status.

Section 1 of the Form I-9 (completed by employees)

- Employees do not need to prove the citizenship status they attest to in Section 1.
 - Do not ask any employee for proof of immigration or citizenship status, such as asking an employee who marks "U.S. citizen" to present a naturalization certificate or U.S. passport, or asking an alien authorized to work (AAW) to present an Employment Authorization Document (EAD).
- Not all AAWs must list an employment authorization expiration date in Section 1 because some AAWs have permission to work that does not expire.
 - Some AAWs can note "N/A" in the expiration date field even though their EADs have an expiration date.
- Employees are not required to write their Social Security numbers (SSN) in Section 1 unless you use E-Verify. Also, regardless of whether you use E-Verify, so long as an employee presents sufficient documentation for Section 2, the employee can begin work for pay even if the employee does not yet have an SSN.

Section 2 of the Form I-9 (completed by employers)

- To satisfy Section 2, employees must be allowed to present any documentation of their choice from the Lists of Acceptable Documents.
 - All employees can choose to present either any unexpired List A document, or any unexpired List B document together with any unexpired List C document.
 - Do not ask any employee to present specific documents. For example, do not ask a lawful permanent resident (LPR) to present a Permanent Resident Card (also known as a "green card") or ask an AAW to present an EAD (also known as a "work permit").
 - If an employee presents too many or too few documents, refer the employee to the Lists of Acceptable Documents so that the employee can select which documentation to present.
 - Do not complete Section 2 with more or fewer documents than needed.
- Some receipts are acceptable under Form I-9 rules for varying lengths of time.
 - A receipt for an application to replace a lost, damaged or stolen List A, List B, or List C document is valid for 90 days from the date the employee presents it for the Form I-9.
 - The arrival portion of the Form I-94 containing a temporary I-551 stamp and photograph is valid until the end of the stamp's expiration date, or if no expiration date, one year from date of issue.
 - The departure portion of the Form I-94 with an unexpired refugee admission stamp is an acceptable receipt valid for 90 days from hire.
- Do not reject valid documentation just because it is unfamiliar, or because it is an older version.
 - For example, do not reject valid List C documents, such as naturalization certificates, Forms I-94 with

asylum stamps, or unexpired Reentry Permits.

- Some individuals, such as those with Temporary Protected Status (TPS), may have EADs that appear expired on the face of the cards, but the EADs may have been “automatically extended” and are still valid.
 - Do not ask employees with automatically extended EADs to present additional documentation during the extension period. For information, visit U.S. Citizenship and Immigration Services’ (USCIS) [website](#).
- Do not reject valid documentation because of an upcoming expiration date.

Section 3 of the Form I-9 (completed by employer)

- Complete Section 3 when 1) reverification is required, such as when an employee’s work authorization expires, or 2) in certain cases when you rehire an employee.
- U.S. citizens and some non-U.S. citizens should not be reverified. For example, do not reverify an LPR who presented a Permanent Resident Card that expired after initial verification.
- Employees can choose whether to present any unexpired List A document or any unexpired List C document for reverification (a List B document is not needed). For example:
 - Allow an AAW who initially presented an EAD for Section 2 to present an unrestricted Social Security card for reverification.

E-Verify (used by enrolled employers)

- Use E-Verify consistently and without regard to the citizenship, immigration status, or national origin of employees.
- Do not prescreen applicants by creating a case for them in E-Verify before hire.
- Do not request that an employee present additional or specific documents if the employee presented sufficient documentation under E-Verify rules for Section 2 of the Form I-9.
- Do not create E-Verify cases for employees who are waiting to receive their SSNs and for employees who present certain receipts for Section 2 documents. Despite the E-Verify delay, allow them to work for pay similar to employees whose E-Verify cases were created within the typical three-day period.
- Do not create E-Verify cases for employees when performing Section 3 reverification.
- Notify every employee who receives a Tentative Nonconfirmation (TNC) and do not make assumptions about employment authorization based on the TNC issuance.
- If an employee receives a TNC, let the employee decide whether to “contest” or “not contest.”
- If an employee contests a TNC, do not fire, suspend, modify a work schedule, delay job placement or otherwise take any action adverse against the employee just because the employee received a TNC.
- If you are enrolled in E-Verify as a federal contractor, follow all rules for when and how to create cases for current employees.

Free Resources If You Have Questions

The Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) offers a free hotline if you have questions about how to complete the Form I-9 or E-Verify processes in a non-discriminatory manner: **800-255-8155**, 9am-5pm ET, M-F (TTY 800-237-2515). Calls can be anonymous and in any language. For more information, visit OSC’s website at www.usdoj.gov/crt/about/osc.

USCIS has Form I-9 and E-Verify resources, including the Handbook for Employers (M-274) (available [online](#)), an employer helpline (888-464-4218), and other educational material on its Form I-9 website at www.uscis.gov/i-9-central, and on its E-Verify website at www.uscis.gov/everify.