

**Verifying Employment Eligibility:
Navigating Compliance with Federal Law
and Alabama's New Law**

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I-9 Compliance

- Employers are required to complete a federal I-9 form to verify the employment eligibility of all employees hired after November 6, 1986.
- Use for every employee, even relatives. Do not discriminate and only use it for employees of a particular national origin or who share some other characteristic.
- Be sure to always use the most current form, because the government modifies the form about every other year or so. See the top right corner of the I-9 form.
- After an offer of employment, or a conditional offer of employment, the employee should complete Section 1 of the I-9 Form no later than the first day of work for pay.
- The employee must provide to the employer documentation of employment eligibility from the I-9's "List A" or one from "List B" and one from "List C." In other words, if you don't get a document from "List A," you must get one from "List B" and one from "List C."
- "List A" documents prove both identity and employment authorization. Acceptable documents are listed on the last page of the I-9 form, and you can see examples online at <http://1.usa.gov/o8hl32>.

- The most common “List A” document is a U.S. passport.
- “List B” documents establish identity only, not work authorization. The most common “List B” document is an unexpired driver’s license.
- “List C” documents establish work or employment authorization. The most common “List C” document is a Social Security card that is unrestricted. Some Social Security cards are stamped “NOT VALID FOR EMPLOYMENT” or “VALID FOR WORK ONLY WITH DHS AUTHORIZATION.” Another common “List C” document is a certified copy of a birth certificate (no photocopies).
- If a document is on the list, the employer must accept it. The employer cannot require an employee to provide a specific document on the list if the document the employee has provided is an apparently valid document on the list.
- An employer is not required to be a document expert. If the document appears to be valid on its face, the employer must accept it. However, if a document is obviously not valid, the employer should reject it.
- When more than one document is received from an employee, compare the names, and compare the photo on a photo ID to the employee’s appearance.

- Discrepancies are grounds for rejecting the documents as not reasonably appearing to be genuine.
- If there is a discrepancy in the names or between the photo and an employee's appearance, the employer should ask the employee to present other documentation that satisfies the I-9 requirements.
- Employees unable to present acceptable documents should be terminated.
- Once the documents are received, the information from them should be used to complete Section 2 of the I-9 form within 3 days of the date employment begins.
- Include the document title (e.g. driver license), the issuing authority (e.g., State of Alabama), the document number, and any expiration date.
- You cannot accept any expired documents. You cannot consider a future expiration date in determining whether to employ someone, as that may constitute employment discrimination.
- However, when certain List A or List C documents expire, they will need to be reverified. So, you need to develop a system to calendar and alert any future expiration dates of List A or List C documents.

- Keep your I-9 forms in a separate file — not with the employee's personnel file. This is not a legal requirement. But decisionmakers who will be using the personnel file don't need to see the I-9 forms, and more importantly, it will help you if you ever need to respond to an I-9 audit. It is also advisable to keep the I-9 forms of current employees separate from terminated employees.
- An employer must retain the Form I-9 for each employee either for 3 years after the date of hire or for 1 year after the employee is terminated, whichever is later. As such, employers must have I-9 forms on file for all current employees.
- What if you get audited by ICE? Federal law mandates that an ICE administrative Form I-9 audit be preceded by a written Notice of Inspection (NOI), providing for the IRCA-mandated 72-hour notice. The NOI will indicate the date, time and place that the ICE agent will arrive, and the documentation that the employer is requested to produce.
- ICE does not do random audits. If you receive an NOI, it is because ICE has received a complaint or been provided information, frequently a disgruntled employee or a competitor.

- Respond to the NOI by (1) immediately contacting a lawyer and (2) gathering the I-9 forms requested for inspection. Review the I-9 forms for any problems that can be corrected or mitigated.
- ICE may ask consent to do a “survey” of the employees present at the employer’s work place, so it is advisable to have an attorney present when investigators are on the company’s premises.
- In the absence of consent, ICE may not make a warrantless search of the company’s premises.
- The best defense to an audit is to take efforts to do compliance on the front end. Another precaution is to do an internal audit periodically, either on your own or using a lawyer.
- Federal civil penalties for knowingly hiring or continuing to employ unauthorized aliens:
1st offense: Between \$375 and \$3,200 for each unauthorized alien; 2nd offense: Between \$3,200 and \$6,500 for each unauthorized alien; Subsequent Offenses: Between \$4,300 and \$16,000 for each unauthorized alien.
- Federal civil penalties for failing to properly complete, retain, or make available for inspection Forms I-9 as required by law, you may face civil money penalties in an amount of not less than \$110 and not more than \$1,100 for each violation

Alabama's new law: Act no. 2011-535
The Beason-Hammon Alabama Taxpayer and Citizen Protection Act

Section 15 — Employment Eligibility Verification/E-Verify

- Section 15 of the new Alabama Act (the "Act") prohibits any business entity or employer from knowingly hiring or continuing to employ an unauthorized alien to work in the State of Alabama.
- This is the same thing prohibited by the federal Immigration Reform and Control Act ("IRCA") for at least 25 years.
- Section 15 of the Act requires all employers to enroll in and use the federal E-Verify system to verify employment eligibility of employees no later than April 1, 2012.
- Unless an employer is a federal contractor, only new employees hired after enrollment in E-Verify should be confirmed using E-Verify.
- E-Verify is a system that allows an employer to take an employee's information from an I-9 form and verify the employee's eligibility to work. It has been required for federal contractors since September 2009 and has also been available for voluntary use by any employer.

- You can get information on the E-Verify system at the USCIS web site www.uscis.gov, at <http://1.usa.gov/8k8MZ>, and you can enroll in E-Verify at <http://bit.ly/xO2bM>.
- Under the new Alabama Act, if an employer fails to use E-Verify, upon a first violation the employer will be required to terminate the employment of all unauthorized aliens, will be put on three-years probation during which the employer must make quarterly reports to the district attorney of all hires, and will have its business license suspended for up to 10 days until the employer provides a sworn statement that all unauthorized aliens have been terminated and that the employer is in compliance with the law. A second offense will result in the “permanent” revoking of all business licenses and permits held by the employer.

Section 16 — The State Income Tax Provision

- Any compensation paid to an unauthorized alien for work or services performed are not deductible as a business expense for state income tax purposes. The consequences of violating this provision is a penalty equal to 10 times the business expense deduction claimed in violation of the provision.

- The prohibition on deductions includes payments to an unauthorized alien who was considered an independent contractor, because the Act says that it applies whether or not an IRS form 1099 was issued.
- The Act does not impose any additional liability because an independent contractor of a company employs unauthorized aliens, but it is still a violation of federal law.
- The Act says: “The employees of an independent contractor working for a business entity shall not be regarded as the employees of the business entity, for the purposes of this act.”
- A good practice is to obtain a W-9 form from all individual (not corporate) independent contractors, as this form requires the contractor to certify that he or she is a “U.S. person” (which means a U.S. citizen or legal resident alien).
- Additionally, if there is a written contract with the contractor, it is a good idea to include a provision in which the contractor agrees to hire only employees who are eligible to work in the USA.
- The federal IRCA prohibits an entity from hiring an independent contractor if the entity knows or has reason to know that the contractor employs illegal aliens.

Section 17 — Civil Cause of Action for Discrimination

- The Act creates a civil cause of action for discrimination for any employee who is not hired or who is fired if the employer hires or continues to employ a worker who the employer knows or should know is an unauthorized alien.
- Damages are limited to “compensatory relief,” which prevents any punitive damages. It is unclear whether damages for emotional distress are included in “compensatory relief.”
- Section 17 also has a very unusual loser-pays attorney-fee provision that says the losing party must pay the attorneys' fees of the prevailing party but only as much as the losing party spent on its attorneys.

Section 9 — State and Local Government-Funded Contracts

- Section 9 of the Act applies to companies that contract with the State of Alabama or any subdivision of the state or any entity funded by the state (or subdivision) and imposes requirements on those entering such contracts and those subcontracting under any such contracts.
- Section 9 becomes effective January 1, 2012.

- Section 9 requires a government contractor or subcontractor to (a) give a notarized verification that it will not knowingly employ an unauthorized alien and (b) provide documentation that it is enrolled in the E-Verify program.
- Section 9 provides that a contractor is not liable for its subcontractors if it receives a sworn affidavit of compliance from the subcontractor.
- For a 1st violation of Section 9 by a government contractor, (a) the contractor will be deemed to be in breach of the contract, and the entity issuing the contract may terminate it after providing notice and an opportunity to be heard, and (b) the Attorney General may bring an action to suspend the contractor's business licenses and permits for up to 60 days.
- For a 2nd violation of Section 9, the contract must be terminated (after providing notice and an opportunity to be heard).

Section 13 — No Concealing, Harboring, Shielding, or Transporting Unauthorized Aliens

- Section 13 of the Act is a criminal provision. It prohibits concealing, harboring, shielding, or transporting unauthorized aliens, or to conspire or attempt to do so, with knowledge of or with reckless disregard to their status as unauthorized aliens.
- A violation is a Class A misdemeanor for each unlawfully present alien, and if the violation involves 10 or more aliens, it is a Class C felony. For a Class A misdemeanor, the punishment is not more than \$6,000 and imprisonment in the county jail of not more than one year. For a Class C felony, the punishment is imprisonment of between 1 and 10 years and a fine of not more than \$15,000.
- An employer who violates the provisions concerning employment of unauthorized aliens can turn it into a criminal offense if the employer conceals, harbors, shields, or transports the unauthorized aliens.
- Any vehicle or other conveyance used is also subject to civil forfeiture.
- There are also provisions that prohibit making or dealing in false documentation of employment eligibility. So if an employer tries to falsify the eligibility of its employees, that is another criminal violation (potentially a Class C felony).

Resources

- Handbook for Employers: Instructions for Completing Form I-9 (69 pages)— access online or download at:
<http://www.uscis.gov/files/form/m-274.pdf>
- The Form I-9 Process in a Nutshell (7 pages):
<http://www.uscis.gov/files/article/EIB102.pdf>
- I-9 document samples:
 - List A — <http://1.usa.gov/o8hl32>
 - List B — <http://1.usa.gov/pyY2Kw>
 - List C — <http://1.usa.gov/qsZ5FD>
- USCIS web site: <http://www.uscis.gov>
E-Verify web site: <http://1.usa.gov/8k8MZ>
Enroll in E-Verify: <http://bit.ly/xO2bM>
- Act 2011-535 — <http://bit.ly/pQNS8K>
- The Alabama Department of Homeland Security
<http://www.homelandsecurity.alabama.gov/>
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Important Dates

<u>September 1, 2011</u>	The state income tax provision (Sec. 16) and the new state cause of action for discrimination (Sec. 17) become effective.
<u>January 1, 2012</u>	The provision governing state and local government or government-funded contracts (Sec. 9) becomes effective.
<u>April 1, 2012</u>	The general employment provision and E-Verify requirement becomes effective (Sec. 15).

Form I-9, Employment Eligibility Verification

Instructions

Read all instructions carefully before completing this form.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the United States) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-8155.

What Is the Purpose of This Form?

The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.

When Should Form I-9 Be Used?

All employees (citizens and noncitizens) hired after November 6, 1986, and working in the United States must complete Form I-9.

Filling Out Form I-9

Section 1, Employee

This part of the form must be completed no later than the time of hire, which is the actual beginning of employment. Providing the Social Security Number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

Noncitizen nationals of the United States 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.

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. Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the Marshall Islands). For such employees, reverification does not apply unless they choose to present

in Section 2 evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766)).

Preparer/Translator Certification

The Preparer/Translator Certification 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.

Section 2, Employer

For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors. Employers must complete **Section 2** by examining evidence of identity and employment authorization within three business days of the date employment begins. However, if an employer hires an individual for less than three business days, **Section 2** must be completed at the time employment begins. Employers cannot specify which document(s) listed on the last page of Form I-9 employees present to establish identity and employment authorization. Employees may present any List A document **OR** a combination of a List B and a List C document.

If an employee is unable to present a required document (or documents), the employee must present an acceptable receipt in lieu of a document listed on the last page of this form. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Employees must present receipts within three business days of the date employment begins and must present valid replacement documents within 90 days or other specified time.

Employers must record in Section 2:

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification in **Section 2**. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. If photocopies are made, they must be made for all new hires. Photocopies may only be used for the verification process and must be retained with Form I-9. **Employers are still responsible for completing and retaining Form I-9.**

For more detailed information, you may refer to the *USCIS Handbook for Employers (Form M-274)*. You may obtain the handbook using the contact information found under the header "USCIS Forms and Information."

Section 3, Updating and Reverification

Employers must complete **Section 3** when updating and/or reverifying Form I-9. Employers must reverify employment authorization of their employees on or before the work authorization expiration date recorded in **Section 1** (if any). Employers **CANNOT** specify which document(s) they will accept from an employee.

- A.** If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B.** If an employee is rehired within three years of the date this form was originally completed and the employee is still authorized to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C.** If an employee is rehired within three years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B; and:
 - 1.** Examine any document that reflects the employee is authorized to work in the United States (see List A **or** C);
 - 2.** Record the document title, document number, and expiration date (if any) in Block C; and
 - 3.** Complete the signature block.

Note that for reverification purposes, employers have the option of completing a new Form I-9 instead of completing **Section 3**.

What Is the Filing Fee?

There is no associated filing fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

USCIS Forms and Information

To order USCIS forms, you can download them from our website at www.uscis.gov/forms or call our toll-free number at 1-800-870-3676. You can obtain information about Form I-9 from our website at www.uscis.gov or by calling 1-888-464-4218.

Information about E-Verify, a free and voluntary program that allows participating employers to electronically verify the employment eligibility of their newly hired employees, can be obtained from our website at www.uscis.gov/e-verify or by calling 1-888-464-4218.

General information on immigration laws, regulations, and procedures can be obtained by telephoning our National Customer Service Center at 1-800-375-5283 or visiting our Internet website at www.uscis.gov.

Photocopying and Retaining Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Form I-9s for three years after the date of hire or one year after the date employment ends, whichever is later.

Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR 274a.2.

Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 12 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529-2210. OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**

**Form I-9, Employment
Eligibility Verification**

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification *(To be completed and signed by employee at the time employment begins.)*

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)			Apt. #
City			State
Zip Code			Date of Birth (month/day/year)
			Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen of the United States
☐ A noncitizen national of the United States (see instructions)
☐ A lawful permanent resident (Alien #) _____
☐ An alien authorized to work (Alien # or Admission #) _____
until (expiration date, if applicable - month/day/year)

Employee's Signature _____ Date (month/day/year) _____

Preparer and/or Translator Certification *(To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.*

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification *(To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)*

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____				

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification *(To be completed and signed by employer.)*

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.		
Document Title: _____	Document #: _____	Expiration Date (if any): _____
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative		Date (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST A

**Documents that Establish Both
Identity and Employment
Authorization**

LIST B

**Documents that Establish
Identity**

LIST C

**Documents that Establish
Employment Authorization**

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	4. Voter's registration card	4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
	5. U.S. Military card or draft record	
	6. Military dependent's ID card	
	7. U.S. Coast Guard Merchant Mariner Card	5. Native American tribal document
	8. Native American tribal document	
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	9. Driver's license issued by a Canadian government authority	6. U.S. Citizen ID Card (Form I-197)
	For persons under age 18 who are unable to present a document listed above:	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
	10. School record or report card	8. Employment authorization document issued by the Department of Homeland Security
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)