

LEARNING MADE EASY

LawLogix Special Edition

Form I-9 & E-Verify

for
dummies[®]
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Learn to correctly
complete the Form I-9

Handle tricky Form I-9
and E-Verify issues

Manage Form I-9 and
E-Verify compliance

Compliments
of

LawLogix
by Hyland

John Fay
Steve Kaelble

About LawLogix, a division of Hyland Software

LawLogix assists millions of people every year through its innovative electronic I-9 compliance, E-Verify, and immigration case management software. Founded in 2000, LawLogix is a trusted Software as a Service provider for many enterprise-level organizations and corporations, including more than 50 members of the Fortune 500 and two of the world's largest retail companies. For more information about LawLogix and its suite of products, visit www.LawLogix.com.

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Introduction

The Form I-9: a simple piece of paperwork to record that an employer has verified its new hire's eligibility to work in the United States. It doesn't seem too bad, right? Wrong.

As those of you in the trenches fully understand, completing an I-9 in a compliant manner involves navigating through numerous gray areas of the law and interpreting some often-conflicting instructions. What's more, if the I-9 is completed incorrectly — even slightly — you're on the hook for some seriously severe penalties.

Tricky Form I-9 rules can make your head spin. There are strict timelines, issues with remote hires, reverifications, “other” names, E-Verify issues, N/A fields, preparer/translator, and the list goes on and on and on. The fact of the matter is, you need to complete the Form I-9 with care, but you also need a fast, easy-to-understand, go-to source for all things related to Form I-9 and E-Verify.

About This Book

Form I-9 and E-Verify For Dummies, LawLogix Special Edition, is your guide to making this vital topic as easy to understand and deal with as you had hoped it would be when you first glanced at the form. You have important business to do, good people to hire, and success to pursue. This book is here to help you navigate through Form I-9 nuances and free the rest of your mind for other priorities.

Read on for an exploration of why the form is important to you, how to complete it, how to keep it up to date, and how to make your compliance process as efficient and cost-effective as possible. Most important, you'll learn how to stay out of trouble. This book was prepared in cooperation with I-9 and E-Verify experts at LawLogix, a division of Hyland Software, whose solutions have helped organizations big and small relieve their Form I-9 compliance headaches.

Foolish Assumptions

In the creation of this book, we've made a few assumptions about you, the reader, to ensure that we're including the most helpful information:

- » You're in the business of hiring and onboarding people or preventing organizational risk, perhaps as a human resources leader, someone involved in HR information systems, or a leader focused on compliance.
- » You know the basics about what federal law requires, but want to be sure you're up to speed on the Form I-9.
- » You don't have all day to surf governmental websites or attend webinars, but would love a quick review.

Icons Used in This Book

The aim of this book is to make your life easier while dealing with governmental compliance. Icons in the margin make it simpler to navigate the book.



REMEMBER

This is a small book, but you're a busy person and may not have time to read every page. At least check out the vital paragraphs marked with this icon.



TIP

You opened the book to find some helpful advice, and the paragraphs indicated by this icon have actionable hints.



TECHNICAL
STUFF

Dealing with governmental requirements can make you want to pull your hair out, but if you don't mind things like fine print, this icon shows you where to find some technical details.



WARNING

There are all kinds of ways to go wrong when it comes to the Form I-9, and this paragraph highlights one of them.

- » Understanding why the Form I-9 is important
- » Completing Sections 1 and 2
- » Exploring the E-Verify process

Chapter 1

The Form I-9 and E-Verify Process for New Hires

How important can a piece of paper possibly be? If it's a U.S. government form, it can potentially be worth far, far more than its weight in gold. Especially if it's the Form I-9, which carries the innocuous title "Employment Eligibility Verification." It probably ought to be named, "Fill Out This Form Correctly or Your Company Could Get into Big, Expensive Trouble."

This chapter explores Form I-9 and the E-Verify process. It also details helpful tips and tricks to navigate through thorny Form I-9 and E-Verify scenarios.

The Importance of Form I-9 Compliance



WARNING

Here's important point Number 1 for employers in the U.S. You are only allowed to employ people who are legally authorized to work here. Most employers are well aware of this requirement and strive to comply, although some of them skirt the rules. It's important not to be one of those employers.

The question that rather simple declaration raises is, “Who is legally authorized to work in the United States?” U.S. citizens, for sure, but the law also allows you to employ permanent residents, nonimmigrant workers, people granted asylum, refugees, and non-citizen nationals.

There’s a long list of possibilities applying to many situations that provide either temporary or permanent permission to work in the U.S.



REMEMBER

With all of that spelled out, here comes important point Number 2 for employers: You need proof that you verified your employee’s eligibility to work in the U.S. This proof is demonstrated by completing the Form I-9, a harmless-looking document that can turn into a ticking time bomb of liability if not done correctly.

U.S. Immigration and Customs Enforcement (ICE) vigorously enforces Form I-9 requirements by conducting audits of employers with only three days’ notice. Employers can be penalized for a wide range of problems, including simple “paperwork” mistakes such as forgetting to fill in a piece of information or completing the form late.

The penalties vary significantly, depending on the percentage of I-9s that are not in compliance and whether this is a first offense or a repeat offense.



WARNING

According to the U.S. Citizenship and Immigration Services, approximately three quarters of all paper I-9 forms have at least one error that may lead to a fine. At that level, employers can expect to pay almost \$2,000 (or more) per I-9 in fines and penalties, even for minor paperwork errors. If your organization has many I-9s under inspection, the price tag for noncompliance can easily break the bank.



WARNING

Here’s one more reason to take the I-9 seriously — as frequent headlines in recent months have made clear, the government has been taking a very hard stance on unlawful immigration, vowing to dramatically increase the number of I-9 audits and hold employers fully accountable. Given this new enforcement-centric climate, it’s only a matter of time before ICE shows up at your doorstep demanding those pesky I-9 forms.

Completing Section 1



REMEMBER

Section 1 of the Form I-9 asks for a variety of biographical and contact information, which must be completed by your new hire employee (not by you, the employer). While many of the questions seem relatively straightforward, there are some important rules and nuances to consider.

First, Section 1 must be completed no later than the employee's first day of work for pay, without exception. Employers often mistakenly believe that they have three days to complete Section 1. There is, in fact, a so-called three-day rule, but it applies only to Section 2 as described later in this chapter. The good news is that Section 1 can be completed before the new hire starts work for pay, at any point after an offer of employment has been made and accepted.



TIP

Given the unforgiving timelines for completing Section 1, make sure you ask your new hire to complete this section of the form as early as possible. Consider making it part of your "preboarding" process. Using an electronic I-9 system (described in Chapter 3) can facilitate this process by allowing you to send the new hire a secure link for completing Section 1 before he or she shows up for work.



REMEMBER

In addition to the timing considerations, employers must also make sure that Section 1 fields are completed properly by the newly hired employee. Although the Form I-9 instructions provide very detailed information about each field, here are some areas where mistakes are often made when filling out this section:

- » **Name fields:** Employees usually have no problem entering their own names, but if there is any question, they should provide their full legal name (generally as recorded on their government-issued ID). If the employee has two last names or a hyphenated last name, ensure that both are entered. If the employee has a maiden name, it should be entered in the Other Last Names Used field.
- » **Social Security Number (SSN):** Although the SSN is generally needed for payroll purposes, it is an optional field for the Form I-9 unless your organization is participating in E-Verify, in which case it is required. E-Verify is the government's Internet-based system that verifies employment

eligibility (more on that later in this chapter). If you are participating in E-Verify and your employee does not yet have a SSN, you can leave the SSN field blank and then ask your employee to enter it later. Don't forget to set a reminder or calendar note to be sure that any such follow-up is completed.

- » **Entering "N/A":** Several fields in Section 1 are optional, but the government requires your employees to enter "N/A" if they choose not to provide certain information. In particular, you should make sure your new hires either enter a value or write "N/A" in the fields for Middle Initial, Other Last Names Used, Apartment Number, Employee's Email Address, and Employee's Telephone Number. The only optional field that does not require "N/A" is the Social Security Number.



REMEMBER

After this biographical information has been entered, the employee must check one of the four boxes to attest to his or her citizenship or immigration status in the U.S. The government considers the employee's attestation to be one of the most important elements of Section 1, so it's critical that you ensure this area is completed properly. Here are some helpful pointers to consider:

- » The most common selection is *citizen of the U.S.*, and it is the easiest in terms of Section 1 completion. No additional information or data is required in the attestation block.
- » *Noncitizen national* of the U.S. refers only to those born in American Samoa, certain former citizens of the Pacific Islands, and certain children of noncitizen nationals born abroad. Some employees will see the words "non-citizen" and choose this attestation by mistake, so be on the lookout if you see this box selected.
- » If your employee selects *lawful permanent resident*, he or she must also enter a seven- to nine-digit Alien Registration Number or U.S. Citizenship and Immigration Services (USCIS) Number. From a practical perspective, an Alien Registration Number (sometimes shortened to "Alien Number") and USCIS number are almost identical. The only difference is that the Alien Number has an "A" in front of it.
- » *Alien authorized to work in the U.S.* can apply to many scenarios, including individuals on nonimmigrant visas, those working pursuant to an employment authorization

document, as well as asylees (people granted asylum) and refugees, to name just a few. Employees selecting this box must enter the date their employment authorization expires (if any) and also provide one of the following: an Alien Registration Number/USCIS Number, a Form I-94 Admission Number, or foreign passport information.



REMEMBER

After the attestation has been entered, the employee must sign and date the form to make it official. By doing so, the employee is attesting under penalty of perjury that all of the information provided is complete, true, and correct. Without an employee signature, the government has no way of knowing whether the employee actually completed this section and intended to make these attestations. Therefore, it's extremely important that your employee sign and date Section 1.

The employee's last step in the Section 1 process is to indicate whether or not a preparer and/or translator was used, by checking the appropriate box. This question is underneath the signature portion, and as a result it's easy to miss. If a preparer or translator helped out, that person must sign and date the form and provide address information.



TECHNICAL
STUFF

One more point about Section 1: Employers using electronic I-9 systems may want to pre-populate information in Section 1 from another HR system in order to save time. Although the government's view of Section 1 pre-population has changed over time, most experts discourage this practice because it may invite scrutiny in the event of an audit. Electronic I-9 system integrations offer numerous other benefits, though, as described in Chapter 3.

Completing Section 2



REMEMBER

Once your new hire employee has completed Section 1, you (as the employer representative) must complete Section 2. This process involves examining your new hire's work authorization documents, recording the document details, entering the start date, and inserting some information about you and the employer.

Section 2 also has a critical timing component (similar to Section 1), but with a twist. First, the general rule is that Section 2 must be completed within three business days after the employee

has started work for pay. Note that the first day of work for pay doesn't count in that calculation. Therefore, if the employee starts work for pay on Monday, the third business day after the employee started work for pay is Thursday.

Now for the twist: If you hire an employee for fewer than three days, you must complete Section 2 on the first day of employment (in other words, the same day as the Section 1 deadline).



WARNING

One more important note: The government defines a “business day” as any day of the week when your organization is open for business. That includes weekends and holidays, if you're open. If your organization is open seven days a week, you should count Saturdays and Sundays in calculating the Section 2 deadline.



TIP

To avoid the hassles of monitoring these timelines, some employers complete Section 2 of the Form I-9 before the employee starts work for pay. As mentioned earlier, this “preboarding” process (particularly when used with an electronic I-9 system) can help you manage tight compliance deadlines.

The Form I-9 instructions provide detailed information about completing Section 2 and reviewing documents, but here are some important tips to prevent common mistakes.

Document choices

Acceptable documents for the Form I-9 are organized into three lists, referred to as List A, List B, and List C. They must be recorded in the correct columns in Section 2. List A includes documents that show both identity and work authorization, such as a U.S. passport. Documents that show identity only, such as a U.S. driver's license, are in List B. Those indicating work authorization only, such as a Social Security card, are in List C.

Employees need only to present one document from List A, or they must provide a combination of one document from List B and one document from List C. All documents should be unexpired and original. Note, however, that employees can present a certified copy of a U.S. birth certificate (under List C). Employees can also present certain types of receipts — for example, when the original is lost, stolen, or damaged — but these are valid for a limited period of time.

When recording document information in Section 2, make sure you enter the document title, issuing authority, document number, and expiration date. If a document number or expiration date is not available or applicable, enter “N/A.”

Examining documents

Employers must physically examine the actual documents — reviewing copies or images of such documents is not permissible. You must accept documents that appear to be reasonably genuine, relate to the person presenting them, and are from the lists of acceptable documents. You aren’t expected to be a document expert, but if something doesn’t look reasonably genuine or reliable to the employee, you should ask for another document.

Photocopying documents

You aren’t required to keep photocopies of the documents presented, unless you participate in E-Verify, in which case you need to keep copies of certain documents only. Check the E-Verify section below for more information. That said, many employers voluntarily choose to keep copies of all documents so that they can easily correct mistakes on the I-9 after the fact. If you decide to copy all documents, make sure you apply this policy consistently for all new hires.



WARNING

You cannot ask for more documents than required, or specify which documents your employees should present. Both of these practices are strictly prohibited and can lead to a charge of discrimination. If an employee brings in several types of documents, let the employee choose which document or combination to use.



**TECHNICAL
STUFF**

The section titled “Lists of Acceptable Documents” (on the third page of the Form I-9) is supposed to contain all possible document combinations. Still, there are certain types of documents that are not specifically listed. For example, a naturalization certificate qualifies as a List C document under the catch-all “Employment Authorization Document Issued by the DHS.” When in doubt, make sure to check the Form I-9 Handbook for Employers (M-274), which is available at uscis.gov.

After the documents have been recorded, you must enter the employee's first day of work for pay in the "Certification" area. During an audit, the government often compares this date with local Department of Labor records, so it is important to record this information properly. The last task is to sign and date where indicated, and also provide your name, title, employer name, and address in this final portion of Section 2.



WARNING

Section 2 must be signed and dated by the same person who physically examined the documents in the presence of the employee and completed the Section 2 information. You're not allowed to review documents by video teleconferencing. See Chapter 3 for tips on managing I-9s for remote employees.

The E-Verify Process

An increasing number of organizations are now using the government's E-Verify system, a program for electronically verifying a new hire's eligibility to work in the U.S. E-Verify aims to take the guesswork out of the verification process by comparing information from a new hire's I-9 with Social Security Administration and Department of Homeland Security databases to determine if there's a match. Participation in E-Verify is voluntary except for certain federal contractors and employers located in states with E-Verify laws and ordinances. To view a list of state and local E-Verify requirements, visit <https://lawlogix.com/e-verify-map>.



REMEMBER

E-Verify has its own unique set of rules and procedures, which will affect your I-9 process. These include the following:

- » You still need to complete a Form I-9 for all new hire employees (E-Verify is not a replacement for the Form I-9).
- » You must create a case in E-Verify within three business days of the employee's first day of work for pay (that's the same deadline as for Section 2).
- » If your employee presents a List B document, you must ensure that it contains a photograph.

- » If your employee presents a U.S. passport, passport card, green card, or employment authorization document, you must retain a photocopy or scan, so that you can compare with the image displayed in the E-Verify system.
- » You need to notify all prospective employees that you participate in E-Verify (there are two mandated posters).
- » You must follow all of the government's rules for dealing with a mismatch (known as Tentative Nonconfirmation or TNC).

For more information on the E-Verify process, see the E-Verify program manual at <https://e-verify.gov>.

- » Deciding when and how to reverify
- » Retaining your documentation

Chapter 2

Reverifying, Updating, and Retaining Documents

Once you've gotten through the Form I-9 process with a new hire, it's tempting to think the job is done. Of course, the reality of federal compliance is never quite that simple.

This chapter explores when you *should* update an employee's Form I-9 as well as when you *must* reverify an employee's work authorization. Just as important, how long must you keep Form I-9 documentation in your files?

When (and How) Should I Update and Reverify I-9s?

As mentioned in Chapter 1, employees and their employers must complete a Form I-9 when an employee is hired to work in the United States. For most employees, that's the end of the story, as long as the employee keeps working for you. If that employee

leaves your workforce, he or she must fill out another Form I-9 when being hired by a different employer.



REMEMBER

There are some situations in which you may wish to update an employee's Form I-9 information. In other cases, you are *required* to do so. In order to update or reverify, you make use of Section 3 of the Form I-9.

This section of the I-9 can be used for a wide variety of purposes, such as updating an employee's name, recording new work authorization documents, or rehiring an employee within three years of completing the employee's previous Form I-9. The next few sections give you a look at each of these scenarios to ensure you are completing Section 3 correctly.

Reverification

Reverification is the most common reason for completing Section 3, but it's also the most confusing. The key point to remember is that you should only reverify employees who have expiring work authorization. How you can tell? It's a two-part test: First, look to see if the employee checked the fourth attestation box (an alien authorized to work) in Section 1 and provided an expiration date. If the employee has provided a date, you must reverify the employee before the expiration.

Next, you should check Section 2 to look for documents in List A or List C that reflect temporary work authorization in the U.S. The most common ones include the Employment Authorization Document (I-766), the Foreign Passport with I-94, Form I-20 for an F-1 student, Form DS-2019 for an employee in J-1 status, and the Form I-797 approval notice for other work-authorized individuals.

You'd think the employment authorization expiration date provided by your employee in Section 1 would match the document expiration date in Section 2, but that isn't always the case. If not, you have to go with the earlier date to require reverification.

Next, your employee must present either a List A or List C document that shows current employment authorization. After you review the document for genuineness, record the information in Section 3 and make sure to sign/date where indicated.



WARNING

You should never reverify a U.S. citizen, a non-citizen national, a lawful permanent resident who presented a green card (even a conditional one), or any List B documents. Doing so can be considered over-documentation, which can lead to a discrimination complaint.



TIP

Remind the employee at least 90 days in advance of the expiration so that he or she has time to obtain new documentation. A well-designed electronic I-9 system can facilitate this process by sending you automated email reminders on a regular basis to ensure that no one falls through the cracks.



TECHNICAL
STUFF

Certain employees, such as those in H-1B or L-1 status, can continue to work you for up to 240 days after their status expires as long as you file a timely extension on their behalf. Employees in other categories are eligible for a 180-day automation extension of their expired Employment Authorization Document. See the M-274 Handbook at uscis.gov for instructions on how to document these tricky scenarios.

Employee name change

This seems like it ought to be straightforward, though it isn't entirely so. For the most part, you're not *required* to update the form if your employee changes his or her name. That said, you *may*, according to the government, in the space provided in Section 3.



TIP

During an I-9 audit, the government compares your I-9 forms against your payroll records, so it's generally a good idea to record name changes of your current employees. The government suggests taking reasonable steps to assure yourself of the employee's identity in the case of a name change, which means you may (but are not required to) ask the employee for documentation. Whatever you decide, make sure to apply this policy consistently for all name changes. If the employee provides you with the legal documentation, you can keep it with your I-9 records to be sure everything is well documented.



WARNING

Although recording names changes is optional for your existing employees, you *must* record any name changes when completing Section 3 for a reverification (discussed in the preceding section) or a rehire (discussed in the next section).

Rehiring an employee

If you rehire a former employee, you can always have him or her complete a new Form I-9. But if the rehire date is within three years of the date when you completed the employee's last Form I-9, you can just fill out Section 3 instead. This is much easier from an administrative standpoint, but you must review the employee's previous Form I-9 to make sure it's eligible.

The first thing to do is confirm that you have a fully completed Form I-9 that was done within the past three years. Next, you'll need to determine if the employee is still authorized to work by reviewing Sections 1 and 2 to see if there is a work authorization expiration date which has since expired. Note that you only need to look for expired List A or List C documents that show temporary work authorization, such as an Employment Authorization Document or I-94.

If the employee is still authorized to work, enter the rehire date in the appropriate box along with any name changes. If the employee is no longer authorized to work in the U.S., request new documentation from List A or List C. You don't need to get a new document from List B.



TIP

As mentioned earlier in this chapter, you can complete a new Form I-9 for all rehired employees or complete Section 3 where allowable. Whichever path you choose, make sure to document this decision in your hiring policies and apply it consistently throughout the organization.



TECHNICAL
STUFF

E-Verify introduces another wrinkle to the Section 3 rehire decision. If you are participating in E-Verify and rehire an employee within three years of the previous Form I-9 completion date, you can only choose to use Section 3 if you previously submitted an E-Verify case for the employee which received an employment authorization result. If not, you must complete a new Form I-9 and E-Verify case.

Retaining I-9s

As important as the Form I-9 is to you, federal immigration officials don't want your forms. They want *you* to hang on to them. In fact, their instructions state that you should never mail the forms to federal immigration officials. However, they state that you must keep the Form I-9 on file for each person on the payroll who is required to complete it, along with any copies you have made of related documentation.



TIP

How long should you retain the form? The first rule of thumb is that it must be on file as long as the employee is on the payroll. What happens when the employee quits or is terminated? Don't start the shredder just yet.

To determine how long after termination you need to hold on to the form and documentation, consider two dates. Look up when the employee first started working for you for pay, and add three years to that date. Then check the termination date and add a year to that. Which of those dates is later — hire date plus three years, or termination date plus one year? Whichever date is later is how long you must retain documentation.

- » Keeping compliant with remote workers
- » Being ready in case of an audit
- » Finding an electronic solution

Chapter 3

Managing Form I-9 Compliance

As simple as the Form I-9 appears to be on the surface, managing your organization's compliance can be anything but simple. You may have remote employees who pose special challenges when it comes to completing the form. You may also have lots of file folders stuffed with old I-9s, full of issues that could come back to haunt you. It's a high-stakes matter, so how should you proceed?

This chapter offers some suggestions for ensuring that your remote employees are in compliance. It also discusses how you can go about auditing your I-9s to ensure you're in good shape — before the government comes in and audits you. It also spells out some of the options for automating the entire process with an electronic solution.

Completing I-9s for Remote Employees

Widespread Internet access offers so many benefits. You can check your bank balance and order a pizza almost instantly. You can upload photos to Instagram from the beach and make your

friends jealous. You can even get hired for certain kinds of jobs while working from home or another remote location, hundreds or thousands of miles from a company location.

Now, think about the Form I-9 completion and reverification process outlined in Chapters 1 and 2. Remote workers are especially challenging because the documents used to prove identity and authorization for employment must be examined in person. If the employee is located nowhere near one of your offices, how in the world can you lay eyeballs on their documents?



REMEMBER

Fortunately, there's an answer. You just need to find someone in the vicinity of the employee to check out those documents on your behalf, and complete Section 2 of the Form I-9. The federal government doesn't even specify who can or can't serve in that role.

That leaves the matter up to you to decide, but it isn't quite as simple as it seems. You need to find someone who is knowledgeable about the Form I-9 and is willing (under penalty of perjury) to sign on the dotted line. No matter whom you find, you're still the one on the hook for getting it right.

Here are some best practices for completing and managing "remote I-9s":

- » **Establish a policy for choosing remote agents.** You have a lot of choices, including people at banks and libraries, local attorneys or accountants, certain state workforce agents, HR people at a nearby employer, or notary publics. Create protocols so your HR team will know what to do when the time comes.
- » **Create clear instructions for the employee and the agent.** Spell out what is expected of the new hire and the remote agent. Tell them how to arrange a meeting, how to fill out their respective parts of the form, and what to do with the documents.
- » **Put a review process in place.** When you receive a remotely completed Form I-9, your HR team must check to see that the proper documents were reviewed, that they were recorded on the form in the right place, and that any necessary photocopies have been obtained.

» **Consider using an electronic I-9 system with multiple remote verification options.** One example is Guardian, from LawLogix. A good electronic system provides you with at least two options:

- Access to a network of trained people available to be your agent for a remote verification
- The ability for your remote employees to visit anyone of their choosing through a secure and guided process

Either way, electronic I-9 systems allow you to monitor the progress of the I-9 and make sure it's completed on time.



TIP

While almost anyone can serve as your agent for I-9 purposes, certain states have rules that may prohibit notaries from touching the Form I-9 at all. California, for example, has indicated that the completion of a Form I-9 by a notary requires the notary to be bonded as an immigration consultant. Texas has indicated that notaries may not complete the Form I-9 in a notarial capacity. Fortunately, notaries are just one option, so you can feel free to choose other individuals as your agent for Form I-9 completion.

Preparing for an Audit and Correcting I-9s

As described in Chapter 1, the government has dramatically increased the number of Form I-9 audits in an effort to hold employers accountable for compliance with the law.

This makes it all the more possible that your organization may face a Form I-9 audit at some point in the near future. “Audit” may have five letters, but to most people, it’s more like a four-letter word. If you’re audited, you want the process to be smooth and uneventful.



WARNING

Don’t be overly alarmed, but now is likely a good time to reiterate that, according to federal officials, as many as 76 percent of the paper I-9 forms in filing cabinets contain some kind of error. If you correct errors in advance, you can reduce and sometimes eliminate potential liability in the event of an audit.

This means remediation. That's eleven letters, but it also might sound like a four-letter word to some. Seriously? Go back through old files to look for errors? Root canal sounds far better.



REMEMBER

The good news is that you can have experts take care of the remediation on your behalf. If you choose the right partner, remediation can be part of the process of converting historical I-9 documentation into an electronic system (more on that in the next section).

One great way to prepare for audits is to have your own self-auditing process in place. It's better for you to do the legwork in advance of any audit, to correct errors and avoid surprises in case the feds drop by.

Your preparation and self-audit process will help you avoid some common traps and faulty frames of mind:

- » **We don't have undocumented workers so we won't be audited.** No, this doesn't mean you won't be audited, especially in this day of increased enforcement activity.
- » **We use E-Verify, so we shouldn't have any problems.** Not necessarily. Remember that E-Verify is not a replacement for doing accurate I-9 work; it's an add-on for extra peace of mind.
- » **A small fine won't hurt.** Who says it'll be a small fine? Minor mistakes might bring a small fine, but that fine is multiplied by the number of mistakes. Beyond that, people who think the fine is small may be recalling the days when the basic penalty was \$110. That's old thinking, because the basic starting point is twice that now.

As you prepare for an audit — whether you do it yourself or work with an expert — learning a bit more about I-9 violations is a good idea. As the discussion in Chapter 1 suggests, violations have various levels of severity, depending on what the problem is, what percentage of your workforce has issues with an I-9, and whether you have a history of trouble.



WARNING

Substantive violations are the most serious mistakes, which could lead to the hiring of an unauthorized worker. Not completing an I-9 at all is one example, but the issues can be smaller. For example, a section of the form may not have been signed, or the

employee didn't check the citizenship status box or didn't include his or her name.

Technical or procedural violations are less serious mistakes, but you still need to correct the error or risk receiving a fine. The kinds of smaller errors that get this treatment include forgetting to include an address or birthdate, the date of hire, or the employer's business name.



TIP

If your organization is ready to evaluate your I-9 situation and get your house in order by correcting I-9s, a great place to begin is with an analysis of your historical I-9s. Whether you do this or hire assistance, the process begins with a review of the forms that are now on file for errors and omissions.

Once you have done so, you can get a ballpark calculation of your potential liability exposure. What percentage of the I-9s have an error? Using the government's chart of potential fines, how much are you on the hook for? Then, create a report showing where the problems are, both so you can fix them, and so you can try to avoid errors of this type in the future.



TIP

After this review, you can prioritize the work. Consider which kinds of errors are likely to earn a fine and how big the potential fines will be. Missing I-9s will be at the top of the list, along with failure to reverify when needed.

When making corrections, you should do so using a different ink color, noting changes with initials and dates. You may consider attaching an explanation to show that you're making a good faith effort at compliance.



WARNING

If a correction must be made to Section 1, the employee is the one who must make the correction. Don't backdate a signature or use white-out. That may be considered a criminal violation.

Utilizing Electronic I-9 Solutions

An electronic I-9 and E-Verify solution may seem like just another software application, but a well-designed system can save you a ton of money. Although many types of solutions are available (often bundled within all-in-one onboarding or applicant tracking systems), specialized I-9 and E-Verify applications provide the ultimate peace of mind.



There are two big reasons for this. First, you are likely spending more than you realize on the Form I-9 and E-Verify process. Just completing the forms costs a lot in salaries and benefits for your HR personnel. E-Verify completion increases that cost. The second big reason: The Form I-9 is an error-prone process and the instructions can be clear as mud. Manual, non-electronic solutions and all-in-one HR systems fail to address this basic fact, creating a high risk of non-compliance that can add up to fines totaling thousands or millions of dollars.

An electronic system, such as Guardian from LawLogix, saves dollars and reduces headaches in multiple ways:

- » **Electronic I-9 compliance:** Automate the whole process in a way that improves records management, increases efficiency, and reduces errors. The system can be configured for a variety of hiring workflows and share data with HR information systems for further streamlining. You can also bring historical I-9s into the software to check for and help correct past I-9 errors and omissions.
- » **E-Verify integration:** Form I-9s created in the software can be automatically sent to E-Verify, mismatches can be easily tracked, and updates can be emailed in real time.
- » **Remote hiring:** Remote employees can complete Section 1 of the Form I-9 at home, and then be connected with a nearby agent (from a list of trained experts) or opt to visit an agent of their choosing for completion of Section 2. Meanwhile, you can monitor the entire process from the comfort of your office to ensure everything is done correctly.
- » **Audit peace of mind:** Ease the pain of a government audit when all your I-9s are kept securely through an electronic solution. For one thing, you often don't have much time to retrieve the necessary documentation, and electronic storage is far better than file cabinets in that regard. Documentation is better, with summaries and audit trail information, proof of security features, audit readiness, and standard procedures that will impress auditors.

- » Ten key takeaways
- » Reminders about I-9 and E-Verify compliance

Chapter 4

Ten Things to Remember about Form I-9 and E-Verify Compliance

If you've read the first three chapters of this book, you now understand the importance of Form I-9 and E-Verify compliance and the significant risks involved. Here are ten important takeaways to keep in mind as you venture forth into the world of more meticulous I-9 and E-Verify compliance:

- » **The government means business.** Form I-9 violations can now be assessed at over \$2,000 per form and quickly ramp up, depending on a variety of factors. One major national tree-trimming company found out the hard way in 2017 when a six-year investigation led to criminal and civil penalties totaling \$95 million for knowingly hiring unauthorized workers. It all began with an audit of the company's I-9 compliance.
- » **Careful hiring is only part of the answer.** Some employers believe they're safe because they are certain they never hire undocumented workers. That's a wise practice, but you still need to ensure that you complete the Form I-9 and check it for errors. Undocumented workers or not, glitches on the I-9 can lead to costly fines.

- » **Time is of the essence.** The employee must complete his or her part of the Form I-9 on or before the first day of paid work. The employer must then wrap up its part within three days after that first paid workday.
- » **Make a list, check it twice.** Three lists, actually. Form I-9 compliance depends on having every employee produce documents proving identity and authorization to work in the U.S. Your employee can choose to provide one document from List A, which establishes both identity and work authorization, or a combination of one document from List B for identity plus something from List C for work authorization.
- » **E-Verify is free, like a puppy.** E-Verify is a free government tool for ensuring that an employee's information checks out, but it does require additional training and support. You'll need to notify all employees you're participating, make copies of certain I-9 documents, and follow the rules for handling mismatches.
- » **Trust, but sometimes reverify.** Form I-9 has a special section for cases when you need to go back and verify an employee's information again. Maybe the employee worked for you, left, then returned. The employee may have changed his or her name or have temporary permission to work here that needs to be updated.
- » **Don't shred that file until you can.** You should always have a current employee's Form I-9 handy. If the employee leaves, save the documentation for the later of three years after hire or one year after termination.
- » **Remote workers need close attention.** Completing I-9s for remote employees can be tricky because you need to review documents in person. Establish a process for choosing remote agents, provide clear instructions, review often, and use an electronic I-9 system to reduce the risk.
- » **Files can be full of problems.** The government says as many as three-quarters of paper I-9 forms have errors. Do you have paper files in your storage room? Create a plan to correct errors. Don't wait for federal agents to drop by and find them for you.
- » **Going electronic pays off.** Run your I-9 compliance with an electronic system and you'll benefit in a lot of ways. The process is easier, more efficient, and less expensive. Files are easier to gather in case of an audit, and moving old files into an electronic system is a great time to check them for errors.



The Right I-9 Solution Doesn't Cost You a Dime

Meet LawLogix Guardian - the only end-to-end electronic I-9 compliance software solution that saves your organization money and eliminates compliance risk. For more than a decade, organizations have relied on Guardian to identify, correct and achieve complete I-9 compliance. While most companies treat Human Resources as a cost center, Guardian's proven solution saves money, streamlines the onboarding process and delivers accuracy, security and complete peace-of-mind.

Learn more at www.lawlogix.com

Simplify Form I-9 and E-Verify compliance

The Form I-9 is how you, as an employer, record that you've verified a new hire's eligibility to work in the United States. It's a simple form, but it involves strict rules about how and when you fill it out, who signs it, and when it must be updated. Completing an I-9 can be tricky because of the exacting requirements for employee documentation. If you get it wrong, you can face severe penalties. This book is your guide to seamless I-9 compliance and the related E-Verify process.

Inside...

- Complete the Form I-9 correctly
- Verify employee documentation
- Know when and how to reverify
- Retain documentation properly
- Handle compliance for remote workers
- Be ready for an audit
- Find an electronic solution

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