



U.S. DEPARTMENT OF JUSTICE  
IMMIGRANT & EMPLOYEE RIGHTS SECTION  
CIVIL RIGHTS DIVISION

# HOW EMPLOYERS CAN AVOID DISCRIMINATION IN THE FORM I-9 AND E-VERIFY PROCESSES

**T**his document discusses how you, as an employer, can avoid discrimination during the process of verifying an employee's employment authorization. Employers verify employees' employment authorization by completing the Form I-9, and, for some employers, by using the E-Verify program. Employees complete Section 1 of the Form I-9. You complete Section 2, and for reverification or rehire, Section 3 as well. Employers that use E-Verify create E-Verify cases after completing the Form I-9 for an employee. Federal law requires you to follow Form I-9 and E-Verify rules consistently, regardless of an employee's citizenship, immigration status, or national origin. This anti-discrimination law is found at [8 U.S.C. § 1324b](#). The regulations for this law are at [28 C.F.R. Part 44](#).

## Employee Completes Section 1 of the Form I-9

Employees complete Section 1 of the Form I-9. No documents should be requested or presented as part of completing Section 1.

Some aliens authorized to work (AAWs) have permission to work that does not expire. The [Form I-9 instructions](#) tell these AAWs to write "N/A" in the expiration date field in Section 1. If an AAW whose work permission does not expire shows an Employment Authorization Document (EAD) for Section 2, the AAW still writes "N/A" in the expiration date field in Section 1.

The Social Security number (SSN) field is optional unless you use E-Verify. But, even if you use E-Verify, employees who present sufficient documentation for Section 2 but are waiting for their SSN have satisfied the Form I-9 and therefore [can begin work for pay while waiting for the SSN](#).

The [Form I-9 instructions](#) have more information on completing Section 1. You can also learn more at [8 U.S.C. § 1324a\(b\)](#) and [8 C.F.R. Part 274a.2\(b\)](#).

## Employer Completes Section 2 of the Form I-9

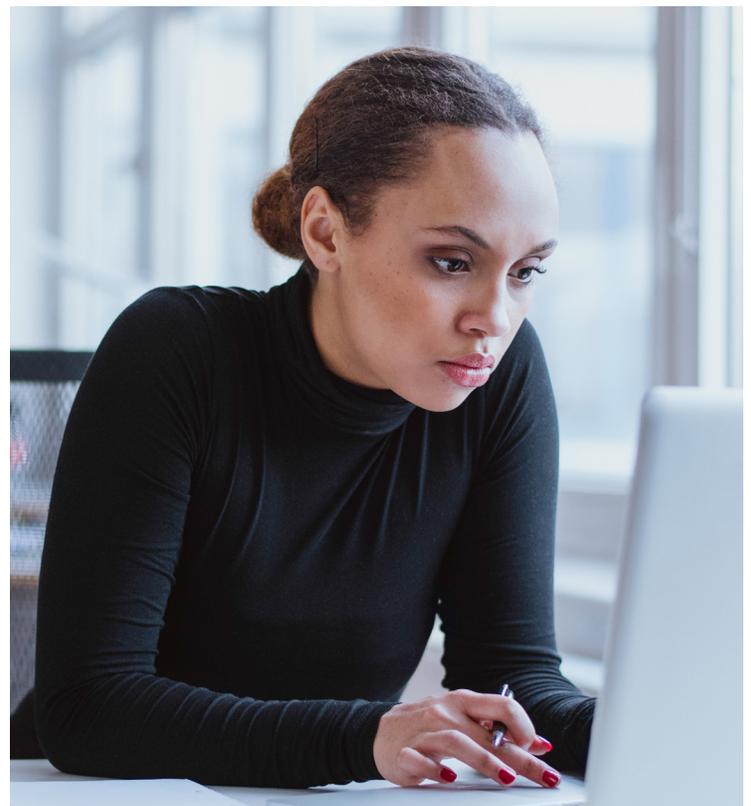
Under the Form I-9 instructions, employees can present any documentation from the Lists of Acceptable Documents to prove their work authorization. All employees can choose to present either an unexpired List A document, or an unexpired List B document together with an unexpired List C document.

Employees do not need to prove their citizenship status to employers when they complete the Form I-9. Asking an employee for proof of citizenship or immigration status could violate the law at 8 U.S.C. § 1324b(a)(6). For example, asking an employee who marks "U.S. citizen" to present a naturalization certificate or U.S. passport, or asking a lawful permanent resident (LPR) to present a Permanent Resident Card (PRC) could be unlawful discrimination under this part of the law.

A receipt to replace a lost, damaged or stolen List A, List B, or List C document is valid for 90 days from the first day of work.

A Form I-94 with 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 the date of issue.

A Form I-94 with a refugee stamp or notation is good for 90 days from the first day of work. See [I-9 Central](#) for more information.



Call IER or USCIS before rejecting valid documentation just because it is unfamiliar or because it is an older version. For example, naturalization certificates, Forms I-94 with asylum stamps, and Form I-327 Reentry Permits are valid List C documents.

In addition, some employees may have EADs that appear expired but qualify for an automatic extension and are still valid. For more information on automatic extensions of EADs, read this [USCIS Fact Sheet](#), the [Handbook for Employers on Completing the Form I-9](#), and 8 C.F.R. 274a.2(b)(1)(vii). You can also call IER or USCIS if you have questions.

Rejecting valid documentation because of an upcoming expiration date could violate 8 U.S.C. § 1324b(a)(6).

### Employer Completes Section 3 of the Form I-9

Complete Section 3 when: (1) you are required to reverify an employee, such as when an employee's temporary work authorization document expires, or (2) in certain cases when you rehire an employee.

Follow the [Form I-9 instructions](#) for reverification and do not reverify U.S. citizens' documents, U.S. nationals' documents, Permanent Resident Cards, or List B documents for Section 3. Subjecting employees to different or unnecessary document requests, based on the employee's citizenship status or national origin, could violate the law at 8 U.S.C. § 1324b(a)(6). Employees can present any valid List A document or List C document for reverification. For example, an AAW who presented an EAD for Section 2 may present an unrestricted Social Security card for reverification.

### Participating E-Verify Employers

Use E-Verify consistently and without regard to an employee's citizenship, immigration status, or national origin. Discrimination in the E-Verify process can violate 8 U.S.C. § 1324b and [E-Verify rules](#).

A different law found at 8 U.S.C. § 1324a note (E-Verify law), the E-Verify [Memorandum of Understanding](#) (E-Verify MOU), and [www.e-verify.gov](#) discuss rules for using E-Verify. Under the law authorizing E-Verify and E-Verify rules:

If you use E-Verify, you must create an E-Verify case for every new hire. You can learn more at [www.e-verify.gov](#), Section 403(a) of the E-Verify law and Article II.A, paragraph 11 of the E-Verify MOU.

Do not prescreen applicants by creating an E-Verify case before hire. Create a case only after completing a Form I-9. This could violate Section 403 of the E-Verify law, Article II.A and paragraph 11 of the E-Verify MOU. You can learn more by contacting IER and in the [M-775 E-Verify User Manual](#), Section 2.0.

Do not request more documents than what the employee already presented for the Form I-9. Requesting more documents than are necessary based on citizenship status or national origin could also be unlawful discrimination under 8 U.S.C. § 1324b(a)(6).

[Delay creating an E-Verify case](#) in some situations, such as for employees awaiting their SSN and employees who present certain receipts for Section 2. Despite the E-Verify delay, allow them to work just like any other employee.

Do not create E-Verify cases for employees when performing Section 3 reverification. This could violate Section 403(a)(3)(A) of the E-Verify law and Article II.A, paragraph 11 of the E-Verify MOU. For more information, read the [E-Verify User Manual](#), Section 4.2.3.

Notify every employee who receives a Tentative Nonconfirmation (TNC). To avoid violating 8 U.S.C. § 1324b, do not make assumptions about employment authorization based on the TNC. If an employee receives a TNC, let the employee decide whether to take action. If an employee takes action on a TNC, do not fire, suspend, modify a schedule, delay job placement or otherwise take any adverse action against the employee just because of the TNC. This could violate Section 403(a)(4)(B)(iii) of the E-Verify law. You can learn more in the [E-Verify User Manual](#) Sec. 3.3.

#### Immigrant and Employee Rights Section (IER)

1-800-255-8155

[www.justice.gov/ier](#)

Calls can be anonymous and language services are available.

TTY 1-800-237-2515

#### U.S. Citizenship and Immigration Services (USCIS)

1-888-464-4218

[www.uscis.gov/i-9-central](#)

[www.e-verify.gov](#)

For questions on properly completing the Form I-9 and properly creating an E-Verify case.

TTY 1-800-877-8339

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