



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

This 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

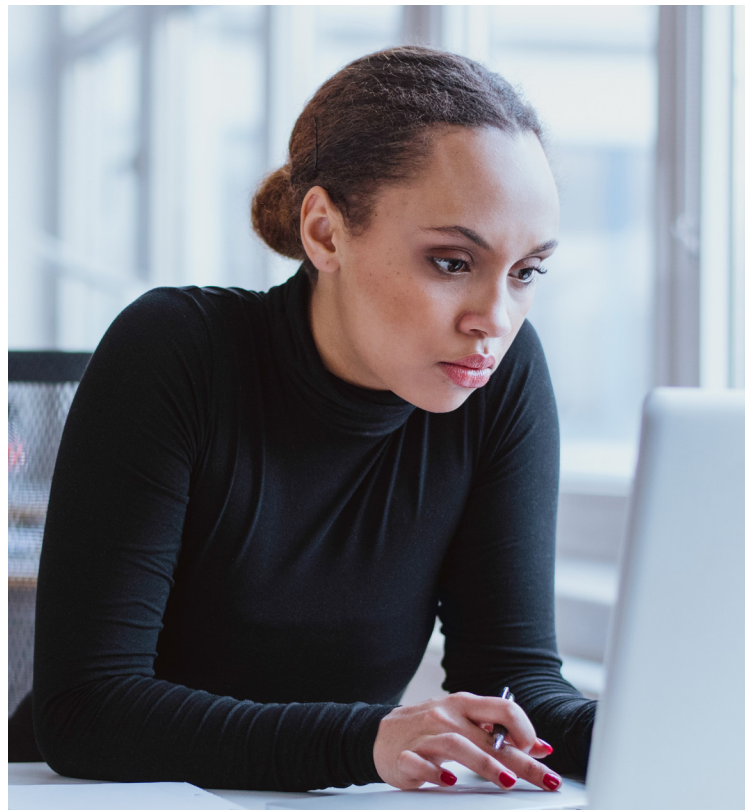
Under the Form I-9 instructions, employees can present any documentation from the Lists of Acceptable Documents to prove their work authorization. All employees can choose to present either an unexpired List A document, or an unexpired List B document together with an unexpired List C document.

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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