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IMMIGRATION COMPLIANCE FOR EMPLOYERS

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Introduction



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Departments/Agencies Responsible for Employer Immigration Compliance

- U.S. Immigration and Customs Enforcement (ICE)-conducts website enforcement investigations and enforces penalty provisions related to hiring unauthorized workers
- U.S. Citizenship and Immigration Services (USCIS)-administers Form I-9 and e-verify system
- Department of Labor's Wage and Hour Division-administers and enforces labor laws applicable to nonimmigrant workers
- Department of Justice's Immigrant and Employee Rights Section-enforces anti-discrimination provisions related to Form I-9 process



Immigration Compliance for Employers

- ❑ Employers may not employ or continue to employ a foreign national “knowing” they are or have become unauthorized to work.
- ❑ Employers are responsible for ensuring all employees hired are work authorized throughout their employment.
- ❑ This is accomplished through the completion of Form I-9



Immigration Compliance for Employers

- Three categories of work authorization:
 - (1) authorization to work for any employer as well as self-employment (e.g. U.S. citizen, permanent resident);
 - (2) authorization to work for a specific employer (e.g. H-1B, L); and
 - (3) authorization to work for any employer as well as self employment based on Employment Authorization Document (“EAD”) issued by USCIS.



Immigration Compliance Actions in the News

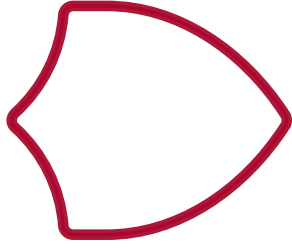
□ ICE Enforcement Actions

□ Worksite raids

□ I-9 Audits



Employer Rights and Responsibilities



ICE Worksite Raids



I-9 Audits

ICE Worksite Raids vs. I-9 Audits

- ICE worksite raids – large-scale enforcement actions that seek to apprehend undocumented workers. They are generally focused on businesses suspected of employing a substantial number of undocumented workers.
- ICE I-9 audits – enforcement actions used to determine whether employees are work authorized by reviewing an employer's I-9 forms.



A black and white photograph of the Statue of Liberty, viewed from a low angle looking up. The statue's face, crown, and right arm holding the torch are visible. Several fighter jets are flying in the sky around the statue. A solid red horizontal bar is at the bottom of the image.

ICE Worksite Raids

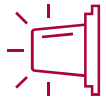
ICE Worksite Raids

- ❑ Increased targeting of meatpacking plants, farms, factories, restaurants, hospitality
- ❑ Employees present without proper authorization may be detained, arrested and placed in removal proceedings.
- ❑ May involve administrative “warrants” and/or civil search warrants

ICE Worksite Raids

- **Administrative “warrants”** provide authority to ICE officers to arrest a person suspected of violating immigration laws. They are not issued by judges or magistrates. They do not provide authority to enter workplace area where there is a reasonable expectation of privacy without consent.
- **Civil search warrants** permit entry into commercial premises to enforce immigration laws. They are issued by judges and magistrates.

Triggers



Disgruntled employee



Competitor



Employee in immigration or criminal proceedings



I-9 audit



Other previous enforcement action against employer

ICE Worksite Raids - Rights and Responsibilities

- ❑ **Counsel:** Employers have a right to request legal counsel.
- ❑ **Scope:** Immigration officers are free to enter public areas but must have a valid search warrant or consent to enter non-public areas.
- ❑ **DO NOT**
 - ❑ Block or interfere with ICE activities or agents
 - ❑ Hide employees or assist them in leaving premises
 - ❑ Provide false or misleading information
- ❑ Employees have a right to remain silent and to an attorney.



ICE Worksite Raids – Be Prepared

1

Understand rights
and
responsibilities

2

Create worksite
enforcement
action plan

3

Designate private
vs. public space

4

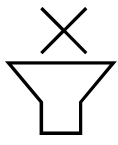
Training



A black and white photograph of the Statue of Liberty, viewed from a low angle looking up. The statue's face, crown, and right arm holding the torch are visible. In the background, several fighter jets are flying in a V-formation against a clear sky. A solid red horizontal bar is at the bottom of the image.

Defensive I-9 Audits

Defensive I-9 Audits



EMPLOYERS SHOULD REMEMBER:

- ▣ Information can be used against them
- ▣ Train staff on what to do if employer receives a subpoena
- ▣ Contact attorney



Defensive I-9 Audits

- ❑ Short response time frame – ICE must give employer at least three business days to produce Forms I-9
- ❑ Notice of Inspection/Subpoena/Request for Documents
- ❑ What are employers required to provide?

Defensive I-9 Audits

- **Technical/procedural violations vs. substantive/uncorrected violations**
- **Knowingly hired or continued to employ unauthorized workers**
 - Results of the Inspection
 - Notice of Inspection Results
 - Notice of Suspect Documents
 - Notice of Discrepancies
 - Notice of Technical/Procedural Failures
 - Warning Notice

Defensive I-9 Audits – Civil Penalties

☐ **Notice of Intent to Fine and Civil Penalties**

- ☐ Matrix of government fines
 - ☐ Mitigating fines
 - ☐ Aggravation of fines
 - ☐ 5% per offense

☐ **Settlement Negotiations**

☐ **Right to Hearing**

☐ **Debarment**

- ☐ Employer must be found to have knowingly hired or continued to employ unauthorized workers
- ☐ Bars employer from participating in future federal contracts and receiving government benefits

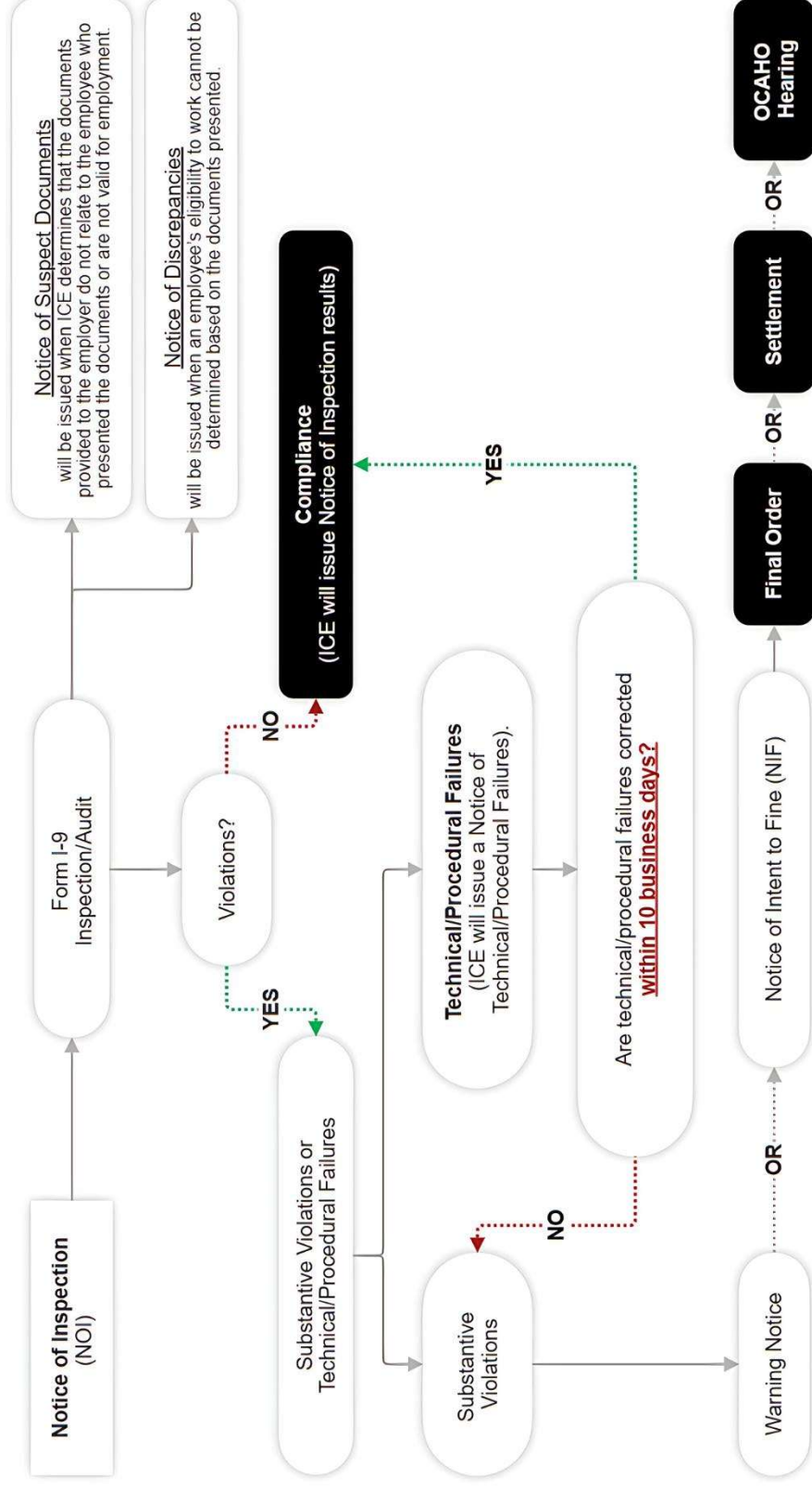


Defensive I-9 Audits – Criminal Penalties

- **Knowingly hired or continued to employ unauthorized workers**
- **Pattern or practice of violations**
- **Aiding and abetting**
- **Harboring unauthorized workers**
- **Severe fines and potential prison sentence**



Notice of Inspection Flow Chart

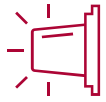


Enhancement Matrix

FACTOR	AGGRAVATING	MITIGATING	NEUTRAL
BUSINESS SIZE	+5%	-5%	+/- 0%
GOOD FAITH	+5%	-5%	+/- 0%
SERIOUSNESS	+5%	-5%	+/- 0%
UNAUTHORIZED WORKER(S)	+5%	-5%	+/- 0%
HISTORY	+5%	-5%	+/- 0%
CUMULATIVE ADJUSTMENT	+25%	-25%	+/- 0%



Audit Triggers



Disgruntled employee



Competitor



Employee in immigration proceedings



ICE raid



For E-Verify employers

Too many tentative non-confirmations

To E-Verify or Not to E-Verify



- ☐ Compares I-9 form and employment eligibility verification to data from US Department of Homeland Security and Social Security Administration
- ☐ Improves compliance
- ☐ Increases potential for audit?
- ☐ Decreases potential for fines



Defensive I-9 Audits- Rights and Responsibilities

- **Time:** Three business days following Notice of Inspection to gather documentation
- **Right to remain silent**
- **Counsel:** Employers have a right to request legal counsel.
- **Scope:** Immigration officers are free to enter public areas but must have a valid search warrant or consent to enter non-public areas.
- **DO NOT**
 - Block or interfere with ICE activities or agents
 - Hide employees or assist them in leaving premises
 - Provide false or misleading information

I-9 Audits – Be Prepared

1

Create internal
procedure

2

Designate private
vs. public space

3

Affirmative audits

4

Training





Affirmative I-9 Audits

Affirmative I-9 Audits

- ❑ Self-audit or internal audit
- ❑ Ensure I-9 for all current employees
- ❑ Importance of random sampling
 - ❑ Do not target “suspect” employees



Affirmative I-9 Audits

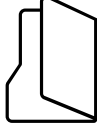
- ❑ Further compliance for employer
- ❑ Mitigate risk and future fines for employer
- ❑ Ensure optimal storage
- ❑ Revisit policies and best practices for document retention and purging

Affirmative I-9 Audits



Correct mistakes

- Review and correct using a different color ink then initial and date
- Do not backdate



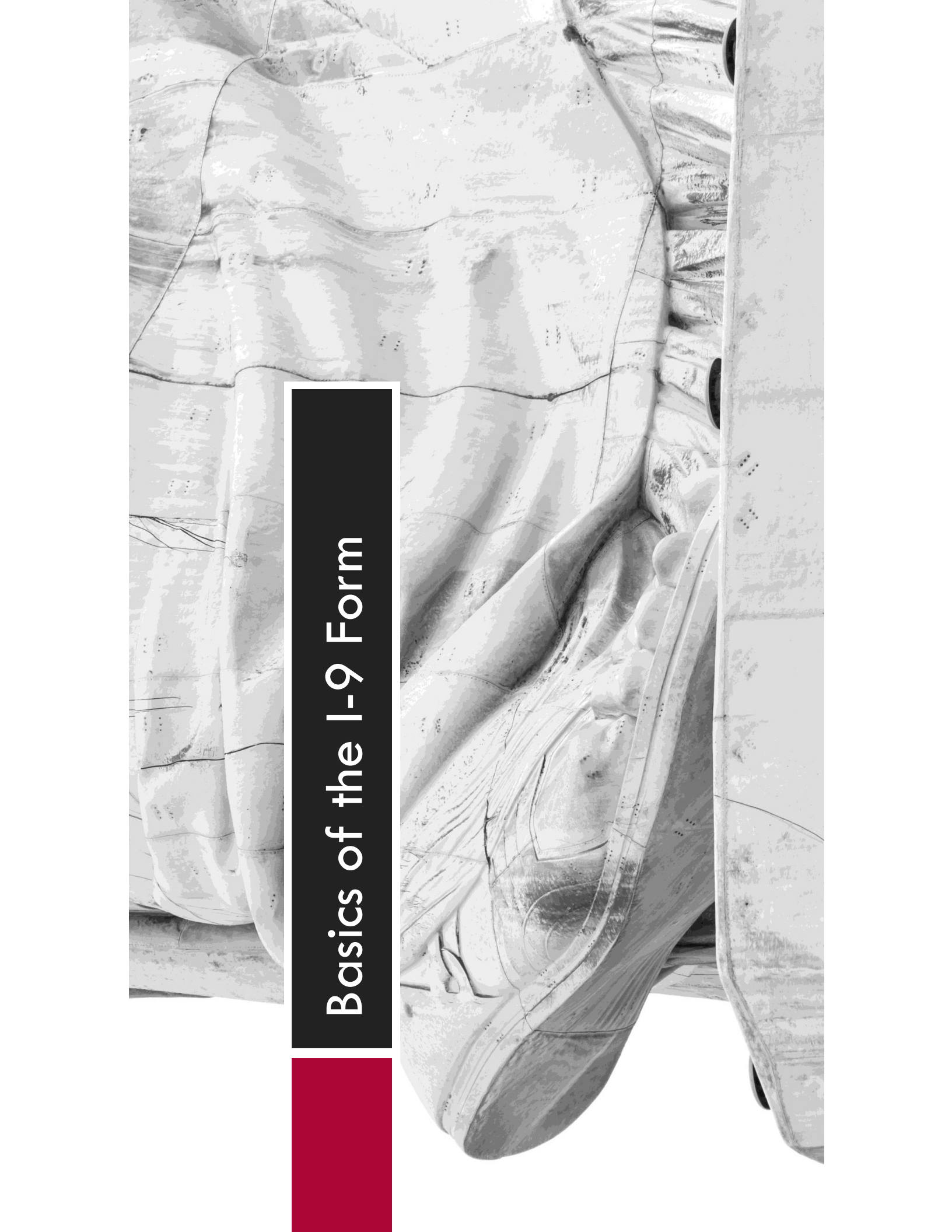
Purge I-9s

- Keep I-9s & copies of documents for 3 years after the date of hire, or 1 year after employment is terminated, whichever is later

Affirmative I-9 Audits

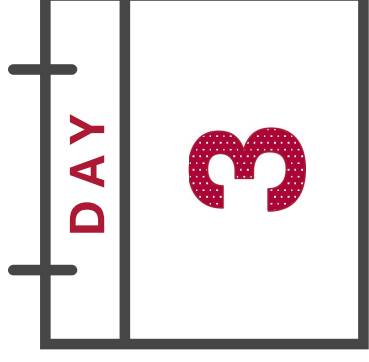
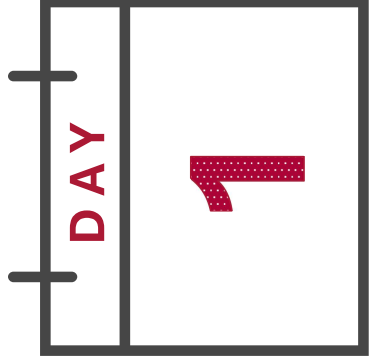
- ☐ **Identify issues with current company practices**
- ☐ **Identify common mistakes**
- ☐ **Create or revise internal procedure**
- ☐ **Provide training**





Basics of the I-9 Form

Basics of the I-9 Form



☐ **Section One** of the I-9 MUST be filled out on the first day of employment

☐ **Section Two** of the I-9 MUST be filled out within three business days of employee's first day of employment

I-9 Acceptable Documents

Lists of Acceptable Documents

Employees may present one document from List A or one from List B plus one from List C

List A

(Identity + Employment Authorization)

1. U.S. Passport or U.S. Passport Card
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
4. Employment Authorization Document that contains a photograph (Form I-766)
5. For an individual temporarily authorized to work for a specific employer because of his or her status or parole:
 - a. Foreign passport; and
 - b. Form I-94 or Form I-94A that has the following:
 - (1) The same name as the passport; and
 - (2) An endorsement of the individual's status or parole as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.
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

- Receipt for a replacement of a lost, stolen, or damaged List A document.
- Form I-94 issued to a lawful permanent resident that contains and I-551 stamp and a photograph of the individual.
- Form I-94 with "RE" notation or refugee stamp issued to a refugee.

List B

(Identity)

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, sex, height, eye color, and address
 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, sex, height, eye color, and address
 3. School ID with photograph
 4. Voter's registration card
 5. U.S. Military card or draft record
 6. Military dependent's ID card
 7. U.S. Coast Guard Merchant Mariner Card
 8. Native American tribal document
 9. Driver's license issued by a Canadian government authority
- FOR PERSONS UNDER AGE OF 18 WHO ARE UNABLE TO PRESENT A DOCUMENT LISTED ABOVE:**
10. School record or report card
 11. Clinic, doctor, or hospital record
 12. Day-care or nursery school record

ACCEPTABLE REPLACEMENTS

- Receipt for a replacement of a lost, stolen, or damaged List B document.

List C

(Employment Authorization)

1. A Social Security Account Number card, unless the card includes one of the following restrictions:
 - (1) NOT VALID FOR EMPLOYMENT
 - (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION
 - (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
 2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
 3. Original or certified copy of birth certificate issued by a State, country, municipal authority, or territory of the United States bearing an official seal
 4. Native American tribal document
 5. U.S. Citizen ID Card (Form I-197)
 6. Identification Card for Use of Resident Citizen in United States (Form I-179)
 7. Employment authorization document issued by the Department of Homeland Security
- For examples, see Section 7 and Section 13 of the M-274 on uscis.gov/i-9-central.
- The Form I-766, Employment Authorization Document, is a List A, Item Number 4. document, not a List C document.

- Receipt for a replacement of a lost, stolen, or damaged List C document.

For full details visit uscis.gov



Example Categories of Authorized Workers

- ❑ US Citizens
- ❑ Permanent Residents
- ❑ Work authorization directly stemming from immigration status (H visas, L-1 A/B, TN)
- ❑ Work authorization cards

Basics of the I-9 Form

- ❑ Employer signs certification if documents reasonably appear to be genuine and relate to the individual presenting them
- ❑ Employer is **NOT** a document fraud expert
- ❑ The Employer's Handbook M-274 provides samples of acceptable documents

Basics of the I-9 Form

☐ What do employers commonly overlook?

- ☐ Employee's section
 - ☐ Not every employee reads the form!
 - ☐ Missing birthdate, forgot to date, etc.
- ☐ Timely completion of employee and employer sections
- ☐ The employer is responsible for ensuring the form is correct and bears the fine for mistakes

Expiring Work Authorization

?

An employee's work authorization expired. Now what?

?

Have they filed for a renewal?

?

How does the employer have this conversation?



Discrimination

- ❑ **Discrimination in hiring**
 - ❑ **Cannot discriminate against individuals on basis of origin, citizenship or immigration status**
- ❑ **Employer should treat all employees the same and give them a reasonable time to address and correct information**

Resources

I-9 Form:

www.uscis.gov/files/form/i-9.pdf

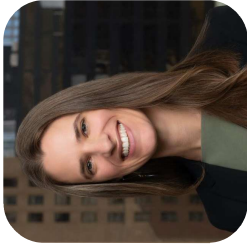
Employer's Handbook:

www.uscis.gov/files/form/m-274.pdf

USCIS I-9 Central:

www.uscis.gov/I-9Central





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THANK YOU!

And of course, please feel free to contact us with any questions.

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