

Sample I-9 and E-Verify Compliance Policy

A. Completing Form I-9: Employees

U.S. law requires that every new employee completes the Form I-9 within three days of hire. It is our company's policy to commence the I-9 process as soon as possible after an offer has been made. The Form I-9 and E-Verify process cannot legally be completed until after the offer has been extended, but should be completed before the first day of hire whenever possible. This allows new hires to follow up with federal agencies if they get a Tentative Non-Confirmation Notice during the E-Verify process, in which the federal government electronically verifies the I-9 information submitted by the employee.

1. After an offer has been accepted and no later than the first day of employment, the responsible I-9 Manager (human resources professional, hiring manager or other employer representative, referred to herein as the "I-9 Manager") must present the new employee with the Form I-9 and request acceptable documentation of identity and US work authorization.

The documents used to complete Section 2 of the I-9 (Driver's License and Social Security Card, U.S. Passport, etc.) must still be physically examined by the I-9 Manager or other designated employer representative, so this part is best conducted in person on the first day of work.

- a. The I-9 Manager may not dictate which documents any employee selects to complete the Form I-9, provided that the employee shows either a qualifying document from List A (showing both identity and work authorization, such as a U.S. passport) or one document each from List B (proving identity, such as a Driver's License) and List C (establishing work authorization, such as a Social Security Card).
- b. No company representative may ask the employee at any time, before or during employment, about their nationality or country of origin. The only permissible question is whether or not the employee is authorized to work in the offered position. Additionally, job offers can and should be made contingent upon an employee's ability to establish or, if needed, secure work authorization.

- c. The documents need not be copied [*alternatively: The documents shall be copied and scanned into Tracker I-9*]. The document type, issuing authority and any expiration dates shall be correctly noted by the I-9 Manager on Section 2 of the Form I-9.
2. The Form I-9 should be completed electronically through Tracker I-9 [*or: through our HRIS, which links with Tracker I-9*], our web-enabled technology [*or: which links with our HRIS, payroll and/or applicant tracking system to avoid duplicate data entry of personal employee data fields, such as address, SSN, and date of birth*].
 - a. The I-9 Manager should ensure that the employee electronically signs the Form I-9, and receives a copy of Section 1. Our I-9 system will prompt this step.
 - b. As errors occur, Tracker I-9 may generate alerts about missing or apparently inaccurate fields. The I-9 Manager must heed the alerts and try to correct any errors before finishing the Form I-9 and submitting the data to E-Verify, where applicable.

B. Completing Form I-9: Independent Contractors

1. Employers do not need to complete I-9s for independent contractors, which include individuals or entities that carry on independent businesses, contract to perform work according to their own means and methods, and are subject to control only regarding results.
2. Notwithstanding the above, it is important to understand that an employer who enters into a contract with an independent contractor knowing they or their employees are not authorized to work, will be treated as though they employed the individuals directly.
3. Therefore, any contract for services with a third party vendor shall specify as follows:

It is the contractor's duty to ensure full compliance of its employees with The Immigration Reform and Control Act ("IRCA") and applicable labor laws, including I-9 and E-Verify rules.

4. It is our policy to refrain from doing business with any entity believed to be violating any employment laws. If you have any reason to suspect a contractor of knowingly hiring unauthorized workers, you should report this concern to the Legal Department immediately.

C. Retention of Form I-9

1. Form I-9 must be retained for a period of 3 years following date of hire, or 1 year after date of termination of an employee, whichever is later. Therefore, all current employees hired after the effective date of IRCA must have Forms I-9 on file.
2. Use Tracker I-9's Retention report to find I-9 Records that can be archived and removed from view.

D. Reverification of Form I-9

1. It is imperative to track expiration dates for those employees with temporary employment authorization, as the regulations require employers to *reverify* employment eligibility in such cases.
2. The reverification must occur no later than the date the authorization expires, at which time the employee must produce an original document demonstrating continued employment authorization.
3. After reverification, the I-9 Manager must update the original form I-9 by recording the new document number and expiration date. Tracker I-9 will allow you to add more than one reverification section to any I-9 Record, without creating a new Form I-9 each time.

E. E-Verify

1. Our organization participates in the E-Verify program to the extent required by law. We currently are registered for E-Verify in the following states: **Arizona, Mississippi, South Carolina, etc.** We have already signed the Memorandum of Understanding (MOU) with the DHS regarding E-Verify. No new MOUs need be signed as we add new states to the list of those participating in the E-Verify program.
2. **Our organization participates in the E-Verify program as a Federal Contractor as required by the Federal Acquisition Regulation. We have already signed the Memorandum of Understanding (MOU) with the DHS regarding E-Verify and updated our company profile in the E-Verify system. As required by the MOU, we must within 90 calendar days from date of enrollment initiate verification of all new employees within 3 business days of date of hire, and must initiate verification for existing employees assigned to a covered contract within 90 calendar days after the award (or applicable modification), or 30 calendar days after the employee's assignment, whichever is later.**
3. All new employees in E-Verify states must have their I-9 information submitted via our Tracker I-9 system to the E-Verify system. This will

ideally be completed at the same time as the I-9 is done internally, for maximum efficiencies and consistent compliance.

4. The only exception will be those employees who are work authorized but cannot yet obtain a social security number due to processing times at the Social Security Administration. Examples include those newly in H-1B or J-1 visa status. For these employees, while the Form I-9 must still be completed within the first three days of work, E-Verify can only be done once the SSN is obtained. A notation should be made in the comments field in Tracker I-9 that the SSN has been applied for on the specified date, and a reminder should be set to E-Verify within two weeks or as soon as possible.
5. If an employee presents a "List B" identity document during the I-9 process, the I-9 manager can only accept it if it contains a photo. If an employee objects to the photo requirement for religious reasons, the I-9 Manager should contact E-Verify at 888-464-4218. Further, if an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the I-9 Manager must make a photocopy and retain it with the employee's Form I-9. The I-9 Manager will use the photocopy to verify the photo with the E-Verify photo screening tool.
6. The company's participation in E-Verify enables qualified F-1 students working pursuant to Optional Practical Training ("OPT") to extend their OPT for an additional 17 months. In order to qualify for the OPT extension, the student must have a degree in science, technology, engineering or math ("STEM") and the hiring site must be using E-Verify.
7. **Optional: E-Verify should not be completed for any employee in a state where we are not currently enrolled. Even a single accidental submission to E-Verify could obligate us to send every employee in that state through E-Verify.**
8. In the event that a Tentative Non-Confirmation ("TNC") is received from the E-Verify system, the DHS advises employers to (1) inform the employee, (2) confirm whether the employee chooses to "contest" or "not contest" the TNC, and (3) refer the employee to the appropriate agency if the TNC is contested. **Note:** the employee has only 8 Federal Government workdays from the date of referral to visit or call the appropriate agency to resolve the discrepancy. The employee can, however, continue to work while the case is being resolved. The employer should check the system periodically for a response from SSA or DHS.

Sample E-Verify Notice to an Employee



Social Security Administration (SSA) Notice to Employee of Tentative Nonconfirmation

Nakamura	Hiro
Last Name of Employee	First Name of Employee
999-99-9992	02/1980
Employee's Social Security Number (SSN)	Employee's Month/Year of Birth
01/19/2009	2009019175905AS
Date of SSA Tentative Nonconfirmation	Case Verification Number
Reason for this Notice:	<input checked="" type="checkbox"/> SSN does not match. The Social Security Number (SSN) entered in E-Verify is valid, but the name and/or date of birth entered for the employee do not match SSA records.
	<input type="checkbox"/> SSN is invalid. The SSN entered in E-Verify is not a valid number.
	<input type="checkbox"/> SSA unable to confirm U.S. Citizenship. Cannot confirm that the employee is eligible to work because SSA records do not show that the SSN holder is a U.S. citizen.
	<input type="checkbox"/> SSN record does not verify, Other Reason. SSA found a discrepancy in the employee's record.
	<input type="checkbox"/> SSA unable to process data. SSA found a discrepancy in other data in the employee's record.

Instructions for the Employer

=== IMPORTANT ===
Employee must acknowledge receipt of this letter, date and sign it, and return it to you.

1. Review this entire letter with your employee.
 - **IMPORTANT:** If the employee cannot read, you must read this notice to the employee. If the employee does not fully understand English and speaks Spanish, you must provide your employee with the Spanish version of this notice.
 - If the information on this letter is not correct, you must first close this case in E-Verify as an "invalid query" and then run a new E-Verify query with the correct information.
 - If the employee's name, SSN and birth date at the top of this letter are correct, your employee has the right to contest this Tentative Nonconfirmation. The employee will do this on Page 2.

This sample policy should not be considered legal advice. Immigration and I-9 Compliance is a complex area of law, and specific issues should be addressed with experienced immigration counsel.

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