

Employment verification is a big hiring compliance requirement



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While finding the right people to serve our members is critical to our success, what follows their employment is also important. Lack of compliance with the employment verification form—the I-9—could represent a serious financial and legal threat to our branch offices and state associations. In recent years, the federal government has escalated its efforts to oversee and enforce I-9 compliance through workplace audits and raids, and the I-9 is more than just a compulsory onboarding employment form. It is a legal document requiring every employer (remember: that’s you if you have anyone earning W-2 wages) to verify their employees’ immigration

status, under penalty of perjury. Non-compliance with those verification requirements is a civil violation and can result in heavy fines and penalties. Given this emphasis, I-9 compliance is more important than ever.

Instances in which completing Form I-9 varies from the norm:

- **Re-verification**—If the employee’s work authorization document has an expiration date, you must re-verify the employee’s right to work prior to that expiration date. Also, when an employment authorization expiration date is provided in Section 1, you are required to re-verify employment authorization on or before the date shown. The need for re-verification is triggered by the document presented by the employee and by the box the employee checks in Section 1 of Form I-9. Branches should create a system to remind them when the employee’s documents will expire and need to be re-verified. Re-verification is not necessary for identity (List B) documents. U.S. passports, whether valid or expired, never require re-verification, and neither do alien registration or permanent resident cards.
- **Rehires**—A new I-9 form does not need to be completed for people rehired within three years of completing a prior I-9. Branches can instead update the prior I-9 by confirming that the employment eligibility document originally presented remains valid. If it does, you may simply record the rehire date in Section 3 of the form. However, if a new version of Form I-9 has been issued, the employee must provide documents from the current list of acceptable documents; you must complete the current version of the I-9 and retain it with the previously completed I-9. Some branches and state associations find it easier to complete a new I-9 for all rehires.

Auditing and correcting Form I-9—Overall, to ensure compliance with the law, you must accurately complete Form I-9 at the outset. Mistakes happen, however, and you may later discover errors on these forms. It is good practice to periodically audit and make any necessary corrections to the I-9s. Remember to make all corrections in a different color ink (red is suggested) to avoid the appearance of tampering with the timing or other compliance requirements. Some I-9 errors are technical and can be corrected, but others are substantive and could require new I-9s in addition to the original forms. Important: Never backdate a form. Periodic self-audits and corrections may assist employers in demonstrating a good-faith effort to comply with the law in the event of a government audit.

Given that both audits and raids are becoming more commonplace—and that the criminal penalties and fines are severe—it is critical that branches and state associations have a robust I-9 compliance practice in place.

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Here are some tips to protect your branch or state association against I-9-related penalties:

- Download the most up-to-date form at uscis.gov/files/form/i-9.pdf, making as many copies as you need, or simply direct your employees to the form.
- Section 1 of the I-9 must be completed by each employee (again, anyone earning W-2 wages through your branch or state association) by their first day of work—the period of time after the job offer has been accepted and before the end of the employee’s first day.
- Section 2 must be completed by you (the employer) within three business days of the date of hire.
- The instruction document and list of acceptable documents (page 3 of the I-9) should be made available to employees at the time they complete Section 1 of the form.

Employees are free to choose which legal documents they submit to establish their identity and eligibility to work in the United States. They must present original, unexpired documents in person to the company representative (a branch officer or other designated employee who is completing Section 2 of the I-9).

I-9s should be stored in a secure location separate from personnel files. If photocopies of documents are made, they should be retained with the I-9s and presented during an investigation or audit by an authorized agency. Completed I-9s must be retained for as long as an individual is employed. I-9s for employees who have separated must be retained for three