



Webinar Course Materials

Smart I-9 Recordkeeping: How to Complete, Retain and Re-Verify Using the New Form I-9

Presented by:

Ruth M. Willars, Esq. Partner
Monty & Ramirez LLP

Friday, January 27, 2017

1:30 p.m. to 3:00 p.m. Eastern

12:30 p.m. to 2:00 p.m. Central

11:30 a.m. to 1:00 p.m. Mountain

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Webinar
Course
Materials

Smart I-9 Recordkeeping: How to Complete, Retain and Re-Verify Using the New Form I-9

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Agenda



- Form I-9 Compliance Fundamentals
- The new Form I-9: What has changed and what has stayed the same
- Answers to Common but tricky Form I-9 Questions
- Reverification Issues
- Correcting Mistakes and Missing Forms
- Recordkeeping and Retention Issues
- Preventing Discrimination
- Conclusion

Immigration Laws



Applicable Immigration Laws:

- ***Immigration and Nationality Act (“INA”)***
- ***Immigration Reform and Control Act of 1986 (“IRCA”)***
 - Established Form I-9 requirements;
 - Established civil, criminal, and monetary penalties; and
 - Established anti-discrimination provisions.



Form I-9 Compliance Fundamentals

Form I-9 Basics



- All employers must verify the identity and employment eligibility on the Form I-9 for every employee hired after November 6, 1986.
- DHS may impose civil and criminal penalties if you knowingly hire or continued to employ an unauthorized alien, or failed to comply with the employment eligibility verification requirements.

Form I-9 Order



*uscis.gov



Presenting the New Form I-9

The New Form I-9



- The new “Smart” Form I-9 can be downloaded as a fillable PDF from www.uscis.gov.
- The new “Smart” Form I-9 now includes drop-down menus, hover text, and real-time error messages.
- Employers are not required to use the “Smart” Form I-9 and still have the option to print out the Form I-9 and complete it by hand.
- Previous Form I-9 version (Rev. 03/08/13) is valid until January 21, 2017.

New Form I-9 Employee and Preparer/Translator Section 1



Section 1 Employee

Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-9
OMB No. 1615-0047
Expires 08/31/2019

▶ START HERE: Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employees are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented was a false expiration date may constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name) () First Name (Given Name) () Middle Initial () Other Last Names Used (If any) ()

Address (Street Number and Name) () Apt. Number () City or Town () State () ZIP Code ()

Date of Birth (mm/dd/yyyy) () U.S. Social Security Number () Employee's E-mail Address () Employee's Telephone Number ()

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

☐ 1. A citizen of the United States ()

☐ 2. A noncitizen national of the United States (See instructions) ()

☐ 3. A lawful permanent resident () (When Registration Number/USCIS Number) ()

☐ 4. An alien authorized to work () (With expiration date, if applicable, mm/dd/yyyy) ()

Some aliens may also "look" in the expiration date box. (See instructions)

Aliens authorized to work must provide any one of the following document numbers to complete Form I-9:

1. Alien Registration Number/USCIS Number () OR

2. Form I-94 Admission Number () OR

3. Foreign Passport Number ()

Country of Issuance ()

Signature of Employee () Today's Date (mm/dd/yyyy) ()

Preparer and/or Translator Certification (check one):

☐ I did not use a preparer or translator. ()

☐ I am a preparer or translator who has been trained and assisted the employee in completing Section 1. ()

(Placed below must be completed and signed when preparer and/or translator assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator () Today's Date (mm/dd/yyyy) ()

Last Name (Family Name) () First Name (Given Name) ()

Address (Street Number and Name) () City or Town () State () ZIP Code ()

Click to Finish

Employer Completes Next Page

Section 1 Preparer/ Translator

New Form I-9 Employer Section 2



Section 2 Manager

Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS Form I-9
OMB No. 1615-0047
Expires 08/31/2019

Section 2. Employer or Authorized Representative Review and Verification
(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine and document from List A, OR a combination of one document from List B and one document from List C, all of the information requested.)

Employee's Date of Birth (mm/dd/yyyy) () Last Name (Family Name) () First Name (Given Name) () M.I. () Citizenship/Immigration Status ()

LIST A Identify and Employment Authorization	OR	LIST B Identify	AND	LIST C Employment Authorization
Document Title ()		Document Title ()		Document Title ()
Issuing Authority ()		Issuing Authority ()		Issuing Authority ()
Document Number ()		Document Number ()		Document Number ()
Expiration Date (if any) (mm/dd/yyyy) ()		Expiration Date (if any) (mm/dd/yyyy) ()		Expiration Date (if any) (mm/dd/yyyy) ()
Document Title ()		Additional Information ()		USCIS Form I-9 Form I-9, Section 2
Issuing Authority ()				
Document Number ()				
Expiration Date (if any) (mm/dd/yyyy) ()				
Document Title ()				
Issuing Authority ()				
Document Number ()				
Expiration Date (if any) (mm/dd/yyyy) ()				

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-referenced document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment: mm/dd/yyyy () (See instructions for exceptions)

Signature of Employer or Authorized Representative () Today's Date (mm/dd/yyyy) () Title of Employer or Authorized Representative ()

Last Name of Employer or Authorized Representative () First Name of Employer or Authorized Representative () Employee's Business or Organization Name ()

Employee's Business or Organization Address (Street Number and Name) () City or Town () State () ZIP Code ()

Click to Finish

New Form I-9 Employer Section 3



Instructions Start Over Print

 **Employment Eligibility Verification**
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Revised 08/01/09

Employee Name from Section 1:		Last Name (Family name):		First Name (Given name):		Middle Initial:	
Section 3: Reverification and Rehire (To be completed and signed by employer or authorized representative)							
A. New Hire (If associate):							
Last Name (Family name):		First Name (Given name):		Middle Initial:		Date of Birth (If associate):	
B. If the employer's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below:							
Document Title:		Document Number:		Expiration Date (If any) (mm/dd/yyyy):			
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.							
Signature of Employer or Authorized Representative:		Today's Date (mm/dd/yyyy):		Name of Employer or Authorized Representative:			
Click to Finish							

Section 3
Updating/
Re-verification



Section 1

Employee Information and Attestation

Completing Section 1



When completing Form I-9, you must make available to your employee the complete instructions to the form and the List of Acceptable Documents. Your newly hired employee must complete and sign Section 1 of Form I-9 no later than their first day of employment.



Employer must complete Section 2 of Form I-9 within 3 days of employee's first day of employment.

Employer Responsibilities for Section 1



- Review the information your employee provided in Section 1.
- Ensure that your employee provided information in all required fields.
- Ensure your employee signed and dated the form.
- Ensure the Preparer/Translator section has been completed, signed, and dated, if your employee used a preparer/translator.
- You may want to remind your employees, at least 90 days before their employment authorization expires that they will need to present a List A or List C document to show continued employment authorization for reverification purposes.

Section 1 Employee Information



Instructions Start Over Print

Employment Eligibility Verification

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2019

► **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in paper or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.)

Last Name (Family Name) ①	First Name (Given Name) ②	Middle Initial ③	Other Last Names Used (if any) ④
Address (Street Number and Name) ⑤		Apt. Number ⑥	City or Town ⑦
		State ⑧	ZIP Code ⑨
Date of Birth (mm/dd/yyyy) ⑩	U.S. Social Security Number ⑪	Employee's E-mail Address ⑫	Employee's Telephone Number ⑬

Section 1 Attestation



I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following boxes):

<input type="checkbox"/> 1. A citizen of the United States ①	
<input type="checkbox"/> 2. A noncitizen national of the United States (See instructions) ②	
<input type="checkbox"/> 3. A lawful permanent resident ③ (Alien Registration Number/USCIS Number): ④	
<input type="checkbox"/> 4. An alien authorized to work ⑤ until (expiration date, if applicable, mm/dd/yyyy): ⑥	
Some aliens may write "N/A" in the expiration date field. (See instructions)	
Aliens authorized to work must provide only one of the following document numbers to complete Form I-9: An Alien Registration Number/USCIS Number OR Form I-94 Admission Number OR Foreign Passport Number.	
1. Alien Registration Number/USCIS Number: ⑦	
OR	
2. Form I-94 Admission Number: ⑧	
OR	
3. Foreign Passport Number: ⑨	
Country of Issuance: ⑩	
Signature of Employee ⑪	
Today's Date (mm/dd/yyyy) ⑫	

QR Code - Section 1
Do Not Write in This Space

Section 1 Preparer/Translator Information



Preparer and/or Translator Certification (check one): ?

☐ I did not use a preparer or translator.

☐ A preparer(s) and/or translator(s) assisted the employee in completing Section 1.

(Fields below must be completed and signed when preparers and/or translators assist an employee in completing Section 1.)

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator ?		Today's Date (mm/dd/yyyy) ?	
Last Name (Family Name) ?		First Name (Given Name) ?	
Address (Street Number and Name) ?		City or Town ?	State ? ZIP Code ?

Click to Finish



Section 2

Employer Review and Verification

Section 2 Overview



Section 2. Employer or Authorized Representative Review and Verification
 (Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

Employee Info from Section 1		Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
List A Identity and Employment Authorization		OR List B Identity		AND List C Employment Authorization	
Document Title		Document Title		Document Title	
Issuing Authority		Issuing Authority		Issuing Authority	
Document Number		Document Number		Document Number	
Expiration Date (if any)(mm/dd/yyyy)		Expiration Date (if any)(mm/dd/yyyy)		Expiration Date (if any)(mm/dd/yyyy)	
Document Title		Additional Information		QR Code - Sections 2 & 3 Do Not Write In This Space	
Issuing Authority					
Document Number					
Expiration Date (if any)(mm/dd/yyyy)					
Document Title					
Issuing Authority					
Document Number					
Expiration Date (if any)(mm/dd/yyyy)					

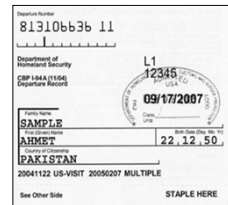
List A Identity and Employment Authorization		OR List B Identity		AND List C Employment Authorization	
Document Title:		Document Title:		Document Title:	
Issuing Authority:		Issuing Authority:		Issuing Authority:	
Document Number:		Document Number:		Document Number:	
Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):	
Document Title:		List A Choose and Present only 1 Document		List B Choose and Present only 1 Document	
Issuing Authority:					
Document Number:					
Expiration Date (if any)(mm/dd/yyyy):					
Document Title:					
Issuing Authority:		List C Choose and Present only 1 Document		LISTS OF ACCEPTABLE DOCUMENTS (See page 10 for more information on documents and page 11 for more information on the Lists of Acceptable Documents.)	
Document Number:					

Receipts



There are only 3 types of acceptable receipts:

1. A receipt showing that the employee has applied to replace a document that was lost, stolen, or damaged;
2. The arrival portion of the Form I-94/I-94A with a temporary I-551 stamp and a photograph of the individual; and
3. Departure portion of the Form I-94/I-94A with a refugee admission stamp.



Receipts (*cont'd*)



When your employee provides an acceptable receipt, you should:

1. Record the document title in Section 2 under List A, List B, or List C, as applicable; and
2. Write the word “receipt,” the document title and number, and the last day that the receipt is valid.

After the receipt expires, you should:

1. Cross out the word “receipt” and any accompanying document number;
2. Record the number and other required document information from the actual document presented; and
3. Initial and date the change.

Note: You cannot accept a receipt for the application for an initial or renewal employment authorization, but can accept a receipt for the application for replacement of a lost, stolen, or damaged employment authorization document.

Note: You cannot accept receipts if employment will last less than three days.

Section 2 Certification



Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): (See instructions for exemptions)

Signature of Employer or Authorized Representative ^②		Today's Date(mm/dd/yyyy) ^②	Title of Employer or Authorized Representative ^②	
Last Name of Employer or Authorized Representative ^②		First Name of Employer or Authorized Representative ^②		Employer's Business or Organization Name ^②
Employer's Business or Organization Address (Street Number and Name) ^②			City or Town ^②	State ^② ZIP Code ^②
Click to Finish				

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be UNEXPIRED

Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
<ol style="list-style-type: none"> U.S. Passport or U.S. Passport Card Permanent Resident Card or Alien Registration Receipt Card (Form I-551) Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable zone 		<ol style="list-style-type: none"> 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, gender, height, color, and address ID card issued by federal, state or government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address School ID card with a photograph Voter's registration card U.S. Military card or draft record Military dependent's ID card U.S. Coast Guard Merchant Mariner Card Native American tribal document Driver's license issued by a Canadian government authority For persons under age 18 who are unable to present a document listed above: <ol style="list-style-type: none"> School record or report card Clinic, doctor, or hospital record Day-care or nursery school record 		<ol style="list-style-type: none"> A Social Security Account Number card, unless the card includes one of the following restrictions: <ol style="list-style-type: none"> NOT VALID FOR EMPLOYMENT VALID FOR WORK ONLY WITH INS AUTHORIZATION VALID FOR WORK ONLY WITH DHS AUTHORIZATION Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal Native American tribal document U.S. Citizen ID Card (Form I-197) Identification Card for Use of Resident Citizen in the United States (Form I-179) Employment authorization document issued by the Department of Homeland Security

List A
Employee
Chooses &
Presents 1
Document

=
1

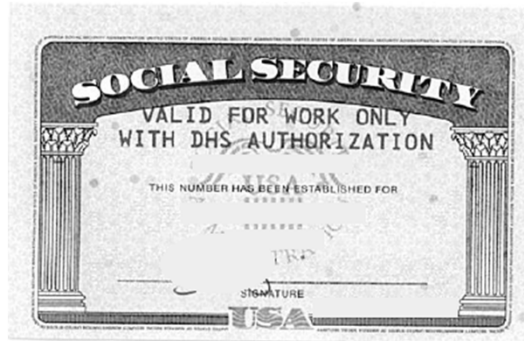
List B
Employee Chooses
Presents 1
Document



List C
Employee Chooses
& Presents 1
Document

=
2

Not a Valid List C Document



Section 3

Reverification and Rehires

Section 3 Reverification



Instructions Start Over Print

 **Employment Eligibility Verification**
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1615-0047
Expires 08/31/2019

Employee Name from Section 1:		Last Name (Family Name)	First Name (Given Name)	Middle Initial
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Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

A. New Name (if applicable)		B. Date of Rehire (if applicable)	
Last Name (Family Name)	First Name (Given Name)	Date (mm/dd/yyyy)	

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
----------------	-----------------	---------------------------------------

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
--	---------------------------	---

Click to Finish

Section 3 Reverification (cont'd)



Outdated Form Issues:

- Employers must use the new Form I-9 for any rehires or reverification of employment authorization.
- If you are reverifying an employee's work authorization that is expiring and the Form I-9 is outdated, you will need to use Section 3 of a new Form I-9 rather than the original Form I-9.

Best Practice: Remind employees at least 90 days before the date reverification is required.

Best Practice: Remember to always keep old and new Forms I-9 together.



Section 3 Reverification (*cont'd*)



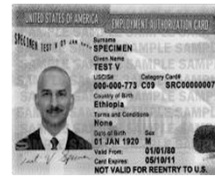
Employers should not reverify:

1. U.S. citizens and noncitizen nationals;
2. Lawful Permanent Residents (status is considered indefinite)
 - Their document might expire, but their work authorization does not; and
 - Employers that reverify Permanent Resident cards can be liable for document abuse; or
3. List B documents.



Most common types of documents that are capable of being reverified are:

- Employment Authorization Documents (EAD's); and
- Expirations relating to non-immigrant status' like H's and L's.



Section 3 Rehires



- An employee that is rehired within 3 years after the original date of hire and the documents are still valid (e.g. work authorization has not expired); no new Form I-9 or reverification needs to be completed
- But you must complete and sign Section 3. Note the current version of the Form I-9 is expired and rehires will need to complete Section 3 of the new Form I-9 for rehires.
- If it has been more than 3 years since the original hire date or the work authorization documents have expired you need to complete a new Form I-9.

*YOU'RE
RE-HIRED!*

Section 3 Rehires (*cont'd*)



To complete Section 3 for rehires, you must:

- Confirm the original Form I-9 relates to the employee in question;
- Review to determine if the employee is still authorized to work, including whether employment authorization documentation presented in Section 2 (List A or List C) has since expired;
- If your employee is still authorized to work and his employment authorization documentation is still valid, enter the date of the rehire in the space provided in Section 3;
- If your employee is no longer authorized to work or his employment authorization documentation has since expired and requires reverification, request that the employee present an unexpired List A or List C document;
- Do not reverify an employee's List B (identity) document. Enter the document information and the date of rehire in the spaces provided in Section 3; and
- If the current version of Form I-9 is different from the previously completed Form I-9, you must complete Section 3 on the new Form I-9.

Section 3 Name Changes



- If your employee informs you that her name, date of birth, or Social Security number is substantially different from that previously provided on Form I-9, and is unable to provide information linking the new information to the identity previously used, you should:
 - Complete a new Form I-9; and
 - Write the original hire date in “The employee’s first day of employment” space, and attach the new Form I-9 to the previously completed Form I-9.



New Identity Scenarios



Scenario: Employee “Carlos” changed his name to “Juan” and acquired work authorization after originally producing fraudulent Form I-9 documents.

What can the company do?

1. Terminate the employee; or
2. Keep the employee now that he or she has legal authorization.
 - Since the company has already invested in the employee's training and experience, it would be economical and time efficient to keep the employee.

There is no duty to fire, but a standard policy that provides the company full discretion should be implemented.



Correcting Mistakes and Missing Forms

Common Form I-9 Errors That Trigger Government Fines



- No Form I-9 for employees hired after 11/6/1986 or failure to timely complete a Form I-9;
- Employee failure to record one's status;
- Employee and employer failure to record document numbers;
- Failure to sign and date the three sections of the Form I-9;
- Failure to execute the Form I-9 by the employer who has viewed the documents and compared the original document to the identity of the employee;
- Failing to update expired List A and C documents; and
- Over-documenting the Form I-9 and insistence on presentation of certain documents, such as insisting that foreign "looking or speaking" hires present List A documents, e.g. permanent resident cards, U.S. passports in lieu of List B and C documents.



Correcting Mistakes



If you discover a mistake on the Form I-9:

- Correct the existing form OR prepare a new Form I-9.
- Section 1 errors must be corrected by the employee and Section 2 and 3 errors must be corrected by the employer.
- If you choose to correct the existing Form I-9, in red ink line out the incorrect portions, enter the correct information, and initial and date the correction.
- If you complete a new Form I-9, attach the old form to the new form and a short memo stating the reason for your action.

Missing Forms



If you discover you are missing a Form I-9 for an employee:

- Immediately provide the employee with a Form I-9;
- You may allow the employee up to 3 business days to provide acceptable documents; and
- DO NOT backdate the Form I-9.

Form I-9 Retention Calculator



1. Enter date employee started work: _____

Add 3 years to Line 1

A. _____

2. Termination date: _____

Add 1 year to Line 2

B. _____

Which date is later: A or B? Enter later date here.]

C.

Store Form I-9
until this date.

Retention Calculator



- Employee's first day of employment = 10/6/2016.
- Employee is terminated on 12/31/2017.
- When does the employer need to retain the Form I-9 until?
 - 10/6/2019

Retention Calculator

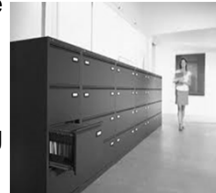


- Employee's first day of employment = 10/6/2016.
- Employee is terminated on 12/31/2019.
- When does the employer need to retain the Form I-9 until?
 - 12/31/2020

Form I-9 Storing



- Provide adequate safeguards to protect employee information.
- Keep separate from personnel records.
- Employers may photocopy the two-sided form by making either double-sided or single-sided copies.
 - Only pgs. 1 and 2 of the new Form I-9 must be retained.
- No matter how you choose to store Forms I-9, you must be able to present them to government officials for inspection within three days of the date on which the forms were requested.



Form I-9 Inspection Process



- Notice of Inspection
 - Submission of documents within 3 days of notice
 - Notice of Suspect Documents
 - Notice of Discrepancies
- Notice of Intent to Fine
- Administrative complaint
- Monetary Penalties:
 - Knowingly hiring and continuing to employ workers without authorization: \$375 to \$16,000 per violation.
 - Substantive violations: \$110 to \$1,100 per violation.



Preventing Discrimination

Preventing Discrimination in the Form I-9 Process



Employers must accept any document an employee presents from the Lists of Acceptable Documents, as long as the document reasonably appears to be genuine and to relate to the employee.

- The document **MUST** be an original* – photocopies are NOT acceptable.

**The only exception is a certified copy of a birth certificate.*



Preventing Discrimination in the Form I-9 Process (*cont'd*)



Employers must not:

- Demand that an employee show specific documents;
- Ask to see employment authorization documents before an individual accepts a job offer;
- Refuse to accept a document, or refuse to hire an individual, because a document will expire in the future;
- Refuse to accept a receipt that is acceptable for Form I-9 purposes; or
- Demand a specific document when reverifying that an employee is authorized to work.

Types of Employment Discrimination Covered by the Office of Special Counsel



Prohibited Discrimination: Employers must not discriminate with respect to hiring, firing, or recruitment or referral for a fee against individuals:

- because they are or are not U.S. citizens or because of their immigration status or type of employment authorization; or
- based on their place of birth, country of origin, ancestry, native language, accent, or because they are perceived as looking or sounding "foreign".

Document abuse during the Form I-9 Process

- Requiring different or extra documents.
- Rejecting documents that reasonably appear to be genuine and relate to the employee.
- Specifying certain acceptable documents over others.

Retaliation: Employers must not intimidate, threaten, coerce, or retaliate against a person who:

- Files a charge with Office of Special Counsel (OSC) or EEOC; or
- Contests an action that may constitute discrimination.



Types of Employment Discrimination Covered by the Office of Special Counsel



Document abuse during the Form I-9 Process

- Employers must not request more or different documents than are required to verify employment authorization and identity.
- Reject documents that reasonably appear to be genuine and relate to the employee.
- Specify certain documents over others based on an employee's citizenship or immigration status, or national origin.



Impermissible Questions: "Have you possessed or used an alternate Social Security number?"



Conclusion



Questions?



Jacob M. Monty



Labor and
Employment Law

Disclaimer



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Ruth M. Willars, Esq.

Ruth Willars' practice consists of employment and commercial litigation, employment counseling, and regulatory compliance. She represents companies during investigations by regulatory agencies including the Department of Labor, Homeland Security Investigations, Internal Revenue Service, and the Security and Exchange Commission. Given the myriad regulations associated with both small and large businesses, Ruth assists her clients in working through the complexities of running a business and being an employer amidst the austere regulatory work environment the United States has become.

Prior to joining Monty & Ramirez LLP, Ms. Willars was the Chief Compliance and Legal Officer for a registered investment adviser. Before taking the in-house position, she worked at other nationally recognized law firms handling labor and employment litigation, which included allegations of discrimination, retaliation, wage and hour violation and breach of contract.