

Immigration Issues in Employment Law

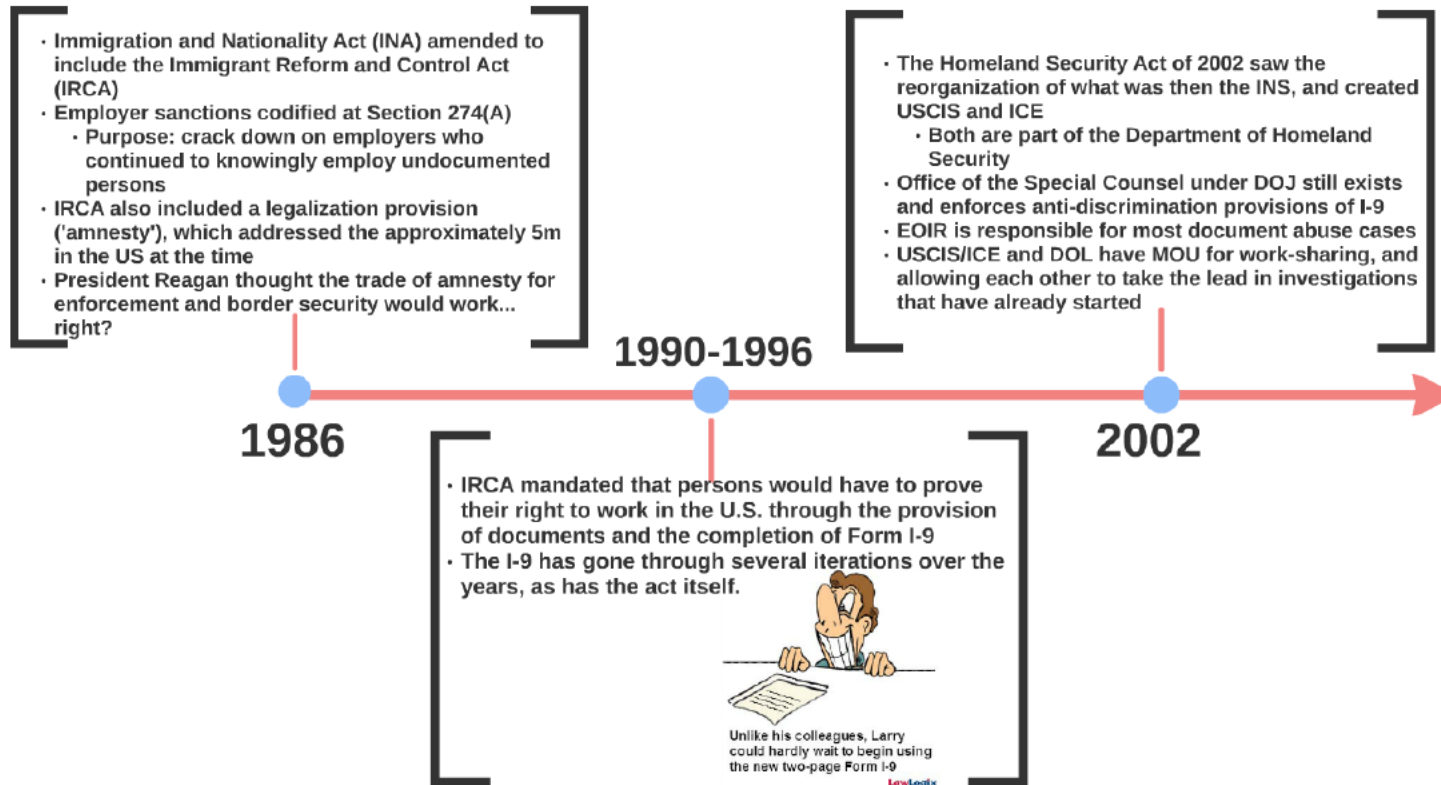
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The History of Employment Compliance



What is an I-9?

- ▶ Mandatory for ALL employees- regardless of nationality
- ▶ Must be filled in within 3 days of hire
- ▶ Must be maintained for at least three years
- ▶ Employer is liable and responsible, not employee

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

USCIS
Form I-9
OMB No. 1615-0047
Replaces I-9 (2013)

INSTRUCTIONS: Read instructions carefully before completing this form. This 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 documents 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 known expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employers 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 (Last of 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 Employer's E-mail Address Employer's Telephone Number

I am aware that federal law prohibits employers and/or firms 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 non-citizen national of the United States (See instructions)

☐ 3. A lawful permanent resident (alien Registration Number/GCIS Number)

☐ 4. An alien authorized to work with temporary date (Registration Number/GCIS Number)

Some aliens may write "N/A" in the expiration date field. (See instructions)

Alien authorized to work must provide any one of the following document number to complete Part 1:

1. Alien Registration Number/GCIS Number OR Form I-94 Admission Number

2. Foreign Passport Number

3. Foreign Passport Number

4. Other: (See instructions)

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

Employer or Translator Certification (check one):

☐ I am not an employer or translator. (If an employer or translator, attach the employee in completing Section 1.)

☐ I am an employer or translator. 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 Employer or Translator Today's Date (mm/dd/yyyy)

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

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

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Section 2. Employer or Authorized Representative Review and Verification
(Employers or their authorized representatives 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 "List of Acceptable Documents".)

Employee Info from Section 1 Last Name (Family Name) First Name (Given Name) Middle Initial (Other Last Names (Last of any)) Citizenship/Immigration Status

Documents that Establish Both Identity and Employment Authorization

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

1. U.S. Passport or U.S. Passport Card

2. Permanent Resident Card or alien Registration Receipt Card (Form I-225)

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-798)

5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:

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 alien's nonimmigrant status as long as that period of employment 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 status and the period of free association between the United States and the FSM or RMI.

Section 3. Reverification and Extension: (To be completed and signed by employer or authorized representative)

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

1. U.S. Passport or U.S. Passport Card

2. Permanent Resident Card or alien Registration Receipt Card (Form I-225)

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-798)

5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:

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 alien's nonimmigrant status as long as that period of employment 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 status and the period of free association between the United States and the FSM or RMI.

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 documentation, the document(s) have expired since the date of the employee's first day of employment.

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

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	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or holding jurisdiction of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	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. Permanent Resident Card or alien Registration Receipt Card (Form I-225)	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, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form PS-544)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form PS-1085)
4. Employment Authorization Document that contains a photograph (Form I-798)	4. Voter's registration card	4. Original or certified copy of both certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:	5. U.S. Military card or draft record	5. Military dependent's ID card
a. Foreign passport and b. Form I-94 or Form I-94A that has the following:	6. U.S. Coast Guard Merchant Mariner Card	6. U.S. Citizen ID Card (Form I-197)
(1) The same name as the passport and (2) An endorsement of the alien's nonimmigrant status as long as that period of employment the proposed employment is not in conflict with any restrictions or limitations identified on the form.	7. Native American tribal document	7. Identification Card for Law of Resident Citizen in the United States (Form I-179)
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 status and the period of free association between the United States and the FSM or RMI.	8. School record or report card	8. Employment authorization document issued by the Department of Homeland Security
	9. Clinic, doctor, or hospital record	
	10. Day-care or nursery school record	

For persons under age 18 who are unable to present a document listed above:

11. School record or report card

12. Clinic, doctor, or hospital record

13. Day-care or nursery school record

Examples of many of these documents appear in Part 8 of the Handbook for Employers (M-274).

Refer to the instructions for more information about acceptable receipts.

Types of Documents

- ▶ I-551 Permanent Resident Cards
 - ▶ Conditional
 - ▶ 10 year
- ▶ I-551 Stamps in Passports or I-94 cards
- ▶ Employment Authorization Cards
 - ▶ Automatic Extensions
- ▶ I-751 Receipts showing automatic extensions

I-9 Inspections

- ▶ Notice of Inspection (NOI) is served to produce I-9.
- ▶ ICE will usually also want payroll, list of employees and articles
- ▶ ICE will conduct full inspection of I-9 compliance.

Homeland Security Investigations
U.S. Department of Homeland Security
1000 2nd Avenue, Suite 2300
Seattle, Washington 98104



U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

August 23, 2013

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify the employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

Federal regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) has scheduled a review of your forms for August 29, 2013. However, you may waive the three-day period, should you wish to do so, by annotating and signing page two of this letter and advising this office of your decision.

During the review, Auditor, will discuss the requirements of the law with you and inspect your Forms I-9. In addition to the presentation of your Forms I-9, you will need to present any documents copied as part of the employment eligibility verification process. If your business utilizes software for the electronic generation and storage of Forms I-9, you will need to present: the name of the software and vendor utilized; the internal business practices/protocols related to the generation of, use of, storage of, security of, and inspection and quality assurance programs your electronically generated Forms I-9; the indexing system identifying how the electronic information contained in the Form I-9 is linked to each employee; documentation of the system used to capture the electronic signature, including the identity and attestation of the individual signing the Form I-9; and the audit trail. Further, pursuant to 8 CFR 274a.2(e)(8)(ii) Auditor, may contact you in the future to schedule a live demonstration of the creation and maintenance of an electronically generated Form I-9.

www.ice.gov

I-9 Inspection Results

- ▶ **Notice of Inspection Results** - also known as a "compliance letter," used to notify a business that they were found to be in compliance.
- ▶ **Notice of Suspect Documents** - advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has determined that an employee is unauthorized to work and advises the employer of the possible criminal and civil penalties for continuing to employ that individual. ICE provides the employer and employee an opportunity to present additional documentation to demonstrate work authorization if they believe the finding is in error.
- ▶ **Notice of Discrepancies** - advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has been unable to determine their work eligibility. The employer should provide the employee with a copy of the notice, and give the employee an opportunity to present ICE with additional documentation to establish their employment eligibility.
- ▶ **Notice of Technical or Procedural Failures** - identifies technical violations identified during the inspection and gives the employer ten business days to correct the forms. After ten business days, uncorrected technical and procedural failures will become substantive violations.
- ▶ **Warning Notice** - issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer.
- ▶ **Notice of Intent to Fine (NIF)** - may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations.

ICE Enforcement to Increase

- ▶ ICE has announced that it will increase I-9 audits this summer
- ▶ ICE will continue to prioritize criminal cases
- ▶ California employers need to make sure to comply with AB 450

AB 450

- ▶ Response to increase of ICE Enforcement
- ▶ Prohibits both public and private employers from permitting immigration enforcement agents to
 - ▶ Enter non-public areas of a workplace without a judicial warrant
 - ▶ Access, review, or obtain the organization's employee records without subpoena or court order

AB 450

- ▶ Requires employers to notify employees that an immigration agency will be inspecting I-9 records within 72 hours of receiving notice of inspection
- ▶ Provide the results of the inspection to affected employees and their representatives, as well as any obligations owed by the employer and employee as a result of inspection
- ▶ Employers may be subject to fines up to \$5,000 for first violation and up to \$10,000 for subsequent.

Should I use E-Verify?

What is E-verify and how does it work?

The screenshot shows the 'Verify Employee' web interface. At the top, there are three navigation buttons: 'Enter Form I-9 Information' (highlighted in dark blue), 'Verification Results', and 'Close Case'. Below these is a instruction: 'Enter employee Form I-9 information, then click **Continue**. * - required'. The form is divided into several sections with input fields and dropdown menus. The 'Last Name' field contains 'Mitchel'. The 'First Name' field contains 'Phillip'. The 'Date of Birth' is selected via dropdowns (Month, Day, Year). The 'Social Security Number' is entered as three separate boxes. The 'Citizenship Status' is set to 'An alien authorized to work'. The 'Document Type' is 'Unexpired Foreign Passport with Form I-94'. The 'Hire Date' is selected via dropdowns (Month, Day, Year). The 'Employer Case ID' is an empty field. At the bottom, there are 'Back' and 'Continue' buttons.

Verify Employee

Enter Form I-9 Information Verification Results Close Case

Enter employee Form I-9 information, then click **Continue**. * - required

* Last Name ?
Mitchel

Maiden Name:

Citizenship Status
An alien authorized to work

Document Type
Unexpired Foreign Passport with Form I-94

* Hire Date ?
Month Day Year

* First Name
Phillip

* Date of Birth
Month Day Year

* Alien Number ?
I-94 Number ?

* Document Number

Employer Case ID ?

Middle Initial

* Social Security Number
- -

Visa Number ?

Document Expiration Date
Month Day Year

Back Continue

- ▶ Internet-based system that allows businesses to verify eligibility of employees to work in the U.S.
- ▶ Not mandatory

Immigrant or non-immigrant

- ▶ Immigrant visas → Lawful Permanent Residency
 - ▶ No restrictions on employment
- ▶ Non-Immigrant → Temporary work visas
 - ▶ Generally restricted to petitioner/employer
 - ▶ Change of employers?

Visas in the work place

▶ E Visas

- ▶ Treaty investors visa
- ▶ Treaty traders
- ▶ E-3 (from Australia)
- ▶ Derivatives with EAD

▶ H Visas

- ▶ Temporary work visas
- ▶ H1B, H2A, H2B
- ▶ H-4 Derivatives

▶ O Visas

- ▶ Extraordinary ability
- ▶ O-1A- science, education, business, athletics
- ▶ O-1B- motion picture/television

▶ L Visas

- ▶ Intra-company transferred employees
- ▶ L1A- executives
- ▶ L1B- specialized knowledge

▶ Deferred Action

- ▶ Work Authorization
- ▶ 2 year increments



Site Visits by Immigration

- ▶ Site visits/investigations by FDNS
- ▶ Reviews for compliance with work visas
- ▶ Voluntary, but strongly encouraged
- ▶ **How employers should prepare for a potential site visit**
- ▶ *Before a site visit:* Employers should be prepared to present any information originally submitted with the petition. The site inspector may also request additional information relevant to the petition.
- ▶ *During the site visit:* Employers should immediately provide any readily available documents and information that the site inspector requests.
- ▶ *After the site visit:* Employers should provide all additional information requested in any follow-up communication from USCIS.

PERM AND PREVAILING WAGE

- ▶ Foreign alien worker- PWD by DOL
- ▶ Recruitment Process
- ▶ ETA-9089
- ▶ I-140
- ▶ Priority Dates
- ▶ Adjustment of Status or Consular Processing

USCIS Rules on H-1Bs and I-140s

- ▶ A foreign national whose I-140 petition has been approved for 180 days or more will not have the petition automatically revoked if the employer goes out of business or withdraws the petition after 1/17/2017
 - ▶ However, the individual will need new job offer
 - ▶ Will retain original priority date
- ▶ Grace Period for Nonimmigrant Workers

Who is Involved?

- ▶ USCIS- United States Citizenship and Immigration Service
- ▶ DHS- Department of Homeland Security
- ▶ ICE- Immigration and Customs Enforcement
- ▶ CBP- Customs and Border Patrol
- ▶ DOL- Department of Labor
- ▶ DOS- Department of State
- ▶ FDNS- Fraud Detection and Nationality Security Directorate

Proposed Changes- RAISE ACT- MERIT SYSTEM

- ▶ Raise Act proposed in 2017 with the merit based system
- ▶ Proposed a merit based point system
- ▶ Points
 - ▶ High paying job offer (13 pts max)
 - ▶ English fluency (12 pts max)
 - ▶ Age (closest to 25) (10 pts max)
 - ▶ Education (STEM and US degrees worth more)(13 points max)
 - ▶ Investment of at least \$1.35M in the US (12 pts max)
 - ▶ Extraordinary achievement (25 pts max)
 - ▶ Having been in line for an eliminated visa category (2 pts)

MERIT BASED POINT SYSTEM

- ▶ Every year those with the most cumulative points would be permitted to apply for a green card.
- ▶ Need at least 30 points to be eligible
- ▶ 140,000 annual cap- no change

Education

Highest Degree Obtained	Points
Foreign high school degree	1
U.S. high school degree	1
Foreign bachelors degree	6
U.S. bachelors degree	6
Foreign professional degree	10
U.S. professional degree	13
Foreign masters in STEM	7
U.S. masters in STEM	8
Foreign PhD in STEM	10
U.S. PhD in STEM	13

Age

Age	Points
18 to 21	6
22 to 25	8
26 to 30	10
31 to 35	8
36 to 40	6
41 to 45	4
46 to 50	2
50+	0

Job Offer

Salary level	Points
1.5x median to 2x median	5
2x median to 3x median	8
3x median and over	13

Investment & Active Management

Investment level	Points
\$1.35 million to \$1.8 million	6
\$1.8 million and over	12

Extraordinary Achievement

Achievement	Points
Nobel Prize & specific equivalents	25
Olympic medal & equivalent	15

English Language

English Assessment Score	Points
6 th to 7 th decile	6
8 th decile	10
9 th decile	11
10 th decile	12

