

MASSACHUSETTS MUNICIPAL HUMAN RESOURCES ASSOCIATION

EMPLOYMENT ELIGIBILITY VERIFICATION AND EEOC UPDATE MARCH 13, 2025

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DISCLAIMER

- The information provided in this presentation is for educational purposes only. The opinions expressed in this presentation are solely those of the presenters. No attorney-client relationship is created or intended to be created by virtue of this presentation.
- Immigration law is complex and nuanced. This presentation provides information in general terms. Please seek individualized guidance from a competent professional before taking any action.
- The information presented today is current as of today. However, immigration statutes, rules, policies and procedures change frequently. Accordingly, before taking any action, it is imperative to seek guidance from a licensed attorney.

AGENDA

- History of the Employment Verification System
- Overview of the I-9
 - Proper Completion
 - Updating I-9s
 - Retention
- E-Verify
- EEOC Issues

HISTORY OF THE I-9 PROCESS

- 11/1986 – Immigration Reform and Control Act of 1986 introduces the I-9 process, employer sanctions, and nondiscrimination protection
- 1997 – Basic Pilot/Employment Eligibility Verification
- 2004 – Electronic I-9 systems authorized
- 2007 – DHS rebrands the Basic Pilot Program as “E-Verify”
- 2008 – President Bush issued E.O. requiring most Federal Contractors to use E-Verify
- 2009 – DHS implements totality of circumstances test for SSA no match letters
- 03/2020 – DHS allows limited remote verification due to COVID
- 07/2023 – DHS limits COVID remote verification to E-Verify employers and published revised Form I-9

SCOPE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM

- Geographic scope: system applies only to persons physically in the United States
- All employers prohibited from employing unauthorized non-citizens
- All employers must maintain I-9 for each employee
- Employers are not required to verify independent contractors or volunteers
- Cannot use contract to obtain labor from a person who employer knows (or should have known) to be unauthorized for employment

EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM--RECURRING ISSUES

- Employee vs. Independent Contractor
- Employee: an individual who provides a service/labor for wages or OTHER remuneration
 - Baby sitter exception: domestic services in a private home that is sporadic, irregular or intermittent
- Independent Contractor: includes individuals and entities that have an independent business, have their own tools, work for a number of clients at the same time, etc.
- Fines assessed based on nature and history of violation: technical vs. substantive; criminal penalties possible
- Civil liability for over documentation and other discriminatory actions

OVERVIEW OF THE FORM I-9

- I-9 header notices
- Part 1 completed by Employee
- Part 2 completed by Employer
- Supp B used to update/re-verify
- List of Acceptable Documents at page 2

I-9 HEADER NOTICE

■ Two important notices

- Form instructions must be available to Employee (EE) at time of completion
- Employer (ER) cannot specify which document(s) EE may present



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

USCIS
Form I-9
OMB No.1615-0047
Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

SECTION 1: PROPER COMPLETION BY EMPLOYEE

1. SSN optional unless E-Verify ER
2. Email & Telephone # optional
3. EE must check a box
 - Regardless of box checked, EE may present document(s) from entire I-9 list
4. EE must sign
5. EE must date
 - Section 1 must be completed on or before first day. Must match date of hire in Section 2.

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 (if any)	Other Last Names Used (if any)		
Address (Street Number and Name)			Apt. Number (if any)	City or Town		State ZIP Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address			Employee's Telephone Number	
I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.			Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):				
			<input type="checkbox"/> 1. A citizen of the United States				
			<input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)				
			<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)				
<input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any) _____							
If you check Item Number 4., enter one of these:				USCIS A-Number _____ OR _____		Form I-94 Admission Number _____ OR _____	Foreign Passport Number and Country of Issuance _____
Signature of Employee					Today's Date (mm/dd/yyyy)		

If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the [Preparer and/or Translator Certification](#) on Page 3.

SECTION 2: PROPER COMPLETION BY EMPLOYER

1. Certifier must “physically” examine documents
2. New: write name of EE at top of page
3. Citizenship/Immigration Status is a number that corresponds to Section 1 (see form instructions)
4. Must note EE start date
5. Employer rep must sign and date
6. Must list date of Section 2 completion, which must be no later than the 3rd business day after EE start date. For example, EE starts on Monday, Section 2 must be completed by end of Thursday.

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see Instructions.

List A		OR	List B	AND	List C
Document Title 1					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 2 (if any)	Additional Information				
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 3 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
					<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears 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.					First Day of Employment (mm/dd/yyyy):
Last Name, First Name and Title of Employer or Authorized Representative			Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)
Employer's Business or Organization Name			Employer's Business or Organization Address, City or Town, State, ZIP Code		

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

SECTION 2: PROPER COMPLETION BY EMPLOYER

- Document Title:
 - Abbreviations can be used
 - If completing a paper form, you may use common abbreviations
- Issuing Authority:
 - Issuing Authority is the specific entity that issued the document (Social Security Administration, U.S. Passport Agency, Massachusetts RMV)
- Document #:
 - Try to find a document # the best you can (SS#, Passport #, I-20 = SEVIS number, DL #)
 - Enter N/A if you cannot find a number
- Expiration Date:
 - The document is not acceptable if already expired—exception: TPS EADs.
 - Enter N/A if you cannot find an expiration date
- Sample Documents: see I-9 Employer Handbook

LIST OF ACCEPTABLE DOCUMENTS

- [See page 2 for complete list](#)
- Documents must be unexpired—exceptions apply
 - *Some* TPS based Employment Authorization Cards
 - *Some* Employment Authorization Cards are valid for 540 days beyond expiration if timely application for extension filed
- All documents must be originals
- Any document presented must reasonably relate to EE
- Must not recommend documents for presentation
- EE decides which documents to present
- If EE asks for advice on which document(s) to present, refer him or her to list at page 3 of the I-9
 - EEs may be assisted by a third party—parent, guardian, translator
 - Some EEs exempted from signing Section 1—minors under 18 and certain EEs with physical or mental impairments

I-9 SUPPLEMENT B: REVERIFICATION AND REHIRE (FORMERLY SECTION 3)

Last Name (<i>Family Name</i>) from Section 1.	First Name (<i>Given Name</i>) from Section 1.	Middle initial (if any) from Section 1.
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Instructions: This supplement replaces Section 3 on the previous version of Form I-9. Only use this page if your employee requires reverification, is rehired within three years of the date the original Form I-9 was completed, or provides proof of a legal name change. Enter the employee's name in the fields above. Use a new section for each reverification or rehire. Review the Form I-9 instructions before completing this page. Keep this page as part of the employee's Form I-9 record. Additional guidance can be found in the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#)

Date of Rehire (<i>if applicable</i>)	New Name (<i>if applicable</i>)		
Date (<i>mm/dd/yyyy</i>)	Last Name (Family Name)	First Name (Given Name)	Middle Initial

Reverification: If the employee requires reverification, your employee can choose to present any acceptable List A or List C documentation to show continued employment authorization. Enter the document information in the spaces below.

Document Title	Document Number (if any)	Expiration Date (if any) (<i>mm/dd/yyyy</i>)
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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 documentation I examined appears to be genuine and to relate to the individual who presented it.

Name of Employer or Authorized Representative	Signature of Employer or Authorized Representative	Today's Date (<i>mm/dd/yyyy</i>)
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Additional Information (Initial and date each notation.)	<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.
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SUPPLEMENT B: REVERIFICATION

- Reverification must be completed prior to the earlier of:
 - The expiration date, if any, of the employment authorization stated in Section 1OR
 - The expiration date, if any, of the List A or List C employment authorization recorded in Section 2
- Reverification not required for:
 - U.S. citizens
 - Lawful permanent residents (including conditional residents) who presented a permanent resident card (Form I-551)
 - List B (identity) documents
 - Name change (though Employer Handbook says it is “recommended.”)
- Reverification documents must:
 - Be unexpired or a receipt
 - Do not have to be the same documents originally presented at time of hire
- Must establish a “tickler” system to remind yourself when to re-verify as the consequences untimely action can be harsh.

COMMON MISTAKES ON I-9

■ Section 1

- EE fails to mark box regarding citizenship/immigration status
- EE fails to sign
- EE fails to date signature

■ Section 2

- Do not over document
 - Either List A document(s) **or** one document from List B and List C
- Must list first date of employment—formerly known has the “hire date”
- Must make sure to sign
- Must date attestation

RETENTION

- Keep I-9's in secure area
- I-9's should be segregated from other employment records
- I-9's must be made available for DHS, DOL, and DOJ inspection
- 72 hour notice for routine inspections
- Must retain I-9 for all current EEs
- May keep electronic copies of physical I-9s (scans)
- May use electronic I-9 system instead of physical I-9s
- Must retain I-9 for terminated EEs for 3 years from date of hire or 1 year after termination whichever is later in time
- Cull I-9s which are no longer required to be retained
- May make copies of employment eligibility documents—must be consistent

E-VERIFY

- E-Verify does not replace the I-9
- System for web-based verification of employment eligibility
- Operated by DHS in partnership with SSA
- Employer must enroll in the E-Verify program by executing a Memorandum of Understanding (MOU)
- Employer submits EE information from a completed Form I-9
- DHS checks information against SSA and DHS databases to determine employment eligibility
- If DHS or SSA can not verify employment eligibility, EE must initiate steps to resolve problem within 10 federal business days

SPECIAL I-9 RULES FOR E-VERIFY EMPLOYERS

- List B Identity Documents must contain a photograph
- EE must provide a SSN
 - If EE does not have SSN, must still complete I-9 by end of third day but delay E-Verify case creation until SSN received
- If Employer continues to employ EE after receipt of a final non-confirmation notice, there is a rebuttable presumption that Employer is knowingly employing an unauthorized alien
- No person or entity is liable, civilly or criminally, for action taken in good faith reliance on information provided by E-Verify
- **Participation in E-Verify does not insulate ERs from liability for discrimination, worksite audits, or other enforcement action**
- **Data collected through E-Verify can be used to make referrals to other agencies**

AUDITS

- Regulations require ICE to give at least 3 days notice
- Audit generally begins with a “Notice of Inspection”
- Notice of Inspection will provide
 - Date of inspection
 - Scope of records requested
 - Original I-9s for all current employees
 - Original I-9s for all terminated employees since X date
 - Payroll journals covering X date to present
 - List of all current employees and date of hire
 - List of all employees terminated after X date and date of termination
 - Copies of any SSA no-match notices
 - Business information
- ICE audits may result in administrative enforcement proceeding

ENFORCEMENT PROCEEDINGS

- Notice of Intent to Fine commences proceedings
 - Employer is named as Respondent
 - Contains specific charges and provisions violated
 - Penalty sought
- Employer has 30 days to request a hearing before an Administrative Law Judge (ALJ)
- Penalties calculated based type and number of violations
- One I-9 can contain multiple violations
- Civil fines range based on:
 - Type of Violation
 - Good Faith
 - History of Violations
 - Status of worker on errant I-9

NONIMMIGRANT VISA CATEGORIES ALLOWING FOR CERTAIN TYPES OF EMPLOYMENT

Symbol	Employment
F-1 on OPT and F-1 STEM OPT	Employment must be directly related to major; STEM OPT limited to work by E-Verify employers and submission of a training plan with student's school
J	Exchange visitors – 13 categories ranging from professors to summer camp counselors
H-1B	Professionals in Specialty occupations-- Quota: up to 85,000 new visas per year nationwide (20,000 reserved for persons with U.S. master's and above). Certain non-profits exempt from quota (e.g., colleges/universities, non-profit and governmental research organizations, etc.)
TN	Professional occupations listed in USMCA treaty—Canadian & Mexican citizens only
H-2A	Seasonal agricultural workers; Must demonstrate lack of available U.S. workers
H-2B	Seasonal non-agricultural workers; must demonstrate lack of available U.S. workers-- Quota: 66,000 new visas per year nationwide
E-3 & H-1B1	Professionals in specialty occupations for citizens of Australia, Chile, and Singapore.
O-1/O-2	Persons of extraordinary ability in sciences, education, business, arts, or athletics and support staff
E-1S/E-2S/E-3D/L-2	Spouses of E-1, E-2, E-3, and L-1 workers— open market employment
P	Athletes, entertainment groups, performers, artists, and support staff

EMPLOYMENT LAW UPDATE – CHANGES IN EEOC ENFORCEMENT PRIORITIES

- Federal law: Title VII of the Civil Rights Act of 1964
 - Prohibits discrimination based on various protected categories, including national origin
 - Equal Employment Opportunity Commission (“EEOC”) enforces antidiscrimination laws such as Title VII
 - EEOC investigates employers for Title VII violations
- State law: Chapter 151B
 - Also prohibits national origin discrimination
 - Massachusetts Commission Against Discrimination (“MCAD”) enforces ch. 151B

EMPLOYMENT LAW UPDATE – CHANGES IN EEOC ENFORCEMENT PRIORITIES

- On January 21, 2025, President Trump appointed Andrea Lucas as the Acting Chair of the Equal Employment Opportunity Commission.
- “I look forward to restoring evenhanded enforcement of employment civil rights laws for all Americans. In recent years, this agency has remained silent in the face of multiple forms of widespread, overt discrimination. Consistent with the President’s Executive Orders and priorities . . . **my priorities will include . . . protecting American workers from anti-American national origin discrimination . . .**”

EMPLOYMENT LAW UPDATE – CHANGES IN EEOC ENFORCEMENT PRIORITIES

- In a February 19, 2025 press release, Acting Chair Lucas announced: “The EEOC is putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via **illegal preferences against American workers**, you must stop. . . . The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers.”
- “The EEOC will help deter illegal migration and reduce the abuse of legal immigration programs by increasing enforcement of employment antidiscrimination laws against employers that illegally prefer non-American workers, as well as against staffing agencies and other agents that unlawfully comply with client companies’ illegal preferences against American workers.”

EMPLOYMENT LAW UPDATE - CHANGES IN EEOC ENFORCEMENT PRIORITIES

- According to Lucas, “many employers” have policies and practices “preferring illegal aliens, migrant workers, and visa holders or other legal immigrants over American workers.”
- “Cracking down on this type of unlawful discrimination will shift employer incentives, decreasing demand for illegal alien workers and decreasing abuse of the United States’ legal immigration system.”
- “Employers have many excuses for why they may prefer non-American workers, but none of these are legally permissible reasons to violate Title VII:
 - lower cost labor (whether due to payment under the table to illegal aliens, or exploiting rules around certain visa-holder wage requirements, etc.);
 - a workforce that is perceived as more easily exploited, in terms of the group’s lack of knowledge, access, or use of wage and hour protections, antidiscrimination protections, and other legal protections;
 - customer or client preference;
 - biased perceptions that foreign workers are more productive or have a better work ethic than American workers.”

EMPLOYMENT LAW UPDATE - CHANGES IN EEOC ENFORCEMENT PRIORITIES

- EEOC's position would apply Title VII in ways that it has not historically been used.
- No specific sectors identified as targets.
- One recent publicized case involving allegations that non-Japanese hotel workers were treated less favorably than Japanese workers. *EEOC v. LeoPalace Guam Corp.*
- Ensure policies are drafted carefully to guard against claims that individuals with certain protected characteristics are treated better than others.

ADDITIONAL GUIDANCE & RESOURCES

- <http://www.uscis.gov/i-9-central>
- <http://www.uscis.gov/e-verify>
- <http://www.justice.gov/crt/about/osc/>

QUESTIONS

