

## I-9 ERRORS, PITFALLS, AND FAQs

1. **Initial Verification:** Documents must be originals that “reasonably appear genuine on their face.” If so, they must be accepted. Employers cannot specify which documents to produce.
  - a. Make sure the employee presents **ORIGINAL** documents. Copies are not acceptable!
  - b. **The law does not require you to copy employee documents!** If you keep copies, you are giving ICE an opportunity to second guess your judgment on whether the document appeared genuine – except that ICE will be looking at a **COPY** when you were looking at an original. Copies are often of poorer quality than originals, and may not look the same. Whoever fills out the I-9 for the employer has to certify that the documents appeared genuine under penalty of perjury, and that is enough.
  - c. Employees must produce 1 document from List A, **OR** 1 from List B **AND** 1 from List C. **Make sure you know the difference between them, and the purpose for each. List A documents prove identity AND authorization to work. List B documents prove IDENTITY ONLY.** List C documents prove work authorization, but do not show identity.
  - d. Errors, typos, and white-out – let your mistakes be seen. There is no reason to make ICE suspicious about what you might have blacked out.
2. **Document Abuse:** Absent a legitimate reason for requesting additional documents or refusing to honor tendered documents, a discriminatory purpose will likely be inferred.
3. **Reverification:** If an employer has information available to it indicating that an employee is not authorized to work, there is a duty to inquire further about the employee’s status, but the employer must be careful to avoid committing an unfair immigration related employment practice. An employer may inquire further by requesting more or additional verification documents without risking charges of document abuse when reliable information arises suggesting that an employee is not authorized to work. If an employer receives a mismatch notice and the employee used an SSN for List C on the I-9, it should reverify the I-9 without using the questionable SSN.

### Frequently Asked Questions About I-9 Verification and Reverification

**Q: Can an employer request certain specific documents it wants to satisfy the I-9, such as a drivers’ license and Social Security Card?**

*A: No. The acceptable documents are listed on the back of the I-9 form. The employer must accept any document that reasonably appears genuine on its face. The Safe Harbor regulation creates limited exceptions to this rule. When reverifying an employee’s I-9 after a mismatch, the employer must insist on a document with a photograph to prove identity or identity and authorization to work. Also, the employer cannot accept any document with a disputed SSN or a receipt or application for replacement of such a document.*

**Q: How long must the employer keep I-9s? Do I have to keep them where the employee is working?**

*A: The I-9 must be retained for at least three years from the date of hire, or one year from the date of termination, whichever is longer. Employers must be able to make I-9s available at the site within 3 days of an audit notification, but can keep the records elsewhere. If I-9s are kept in a centralized location, they must be easily retrievable in case the government does not want to allow additional time for an inspection.*

**Q: What do I do if an employee has lost his original documents?**

*A: If an individual’s document has been lost, stolen or damaged at the time of initial hire, then he or she can present a receipt for the application for a replacement document. The replacement document must then be presented within **90 days of hire**, or in the case of re-verification, when the work authorization expires. If the employee cannot provide the actual document within that time, then he or she must be laid off or terminated until the actual document can be produced. Remember, receipts to replace documents containing a disputed SSN cannot be used for reverification after a mismatch if the Safe Harbor regulation takes effect. A receipt is never valid for employment of less than three working days.*

**Q: What do I do if I discover an unauthorized worker?**

*A: If there is information suggesting that an employee is working without authorization, you should reverify their work authorization. Suspend the employee for three days pending production of acceptable documentation. You must terminate the employee if he does not produce acceptable documentation. Remember, if information comes up when following up on a Social Security mismatch that shows that the employee is undocumented, or if the employee admits he or she is undocumented, then the employer must terminate the employee. If the Safe Harbor regulation takes effect, once 93 days have passed since receipt of the mismatch letter, and the employee has not resolved the mismatch and completed a new I-9 with verifiable documents, then the employer must terminate the employee.*

**Q: When do I need to reverify employment authorization?**

*A: You must reverify employment eligibility when an employee’s work authorization expires, when an employee is re-hired within three years of the date of his original I-9, or when information arises that calls the work authorization into question. You must reverify employment authorization on Section 3 of the I-9 or by completing a new I-9 (to be attached to the original I-9) no later than the expiration date of the prior work authorization. You are not required to reverify an expired U.S. passport or “green card” (Form I-551), which are issued only to lawful permanent residents, and you need not reverify expired List B (identity only) documents. Temporary evidence of permanent resident status, in the form of an unexpired foreign passport containing a temporary I-551 Alien Documentation Identification and Telecommunication System (ADIT) stamp, must be reverified upon expiration. List B (identification only) documents do not need to be reverified when they expire. All employers must have a system to “flag” work authorization documents before they expire to avoid interrupting the employment relationship!*