



## Immigration Reform and Control Act (I-9)

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

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## Immigration Reform and Control Act (I-9)

**Reference Number:** MTAS-1937

The Immigration Reform and Control Act (Pub. L 99-603) was originally passed on November 6, 1986, in order to control and deter illegal immigration to the United States. Further modifications by the Immigration and Naturalization Act of 1990 (Pub. L 101-649) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L 104-208) resulted in the requirement for employers to verify the identity and employment eligibility of any person employed by the organization. The U.S. Citizenship and Immigration Service (USCIS), formerly Immigration and Naturalization Services (INS), is responsible for the documentation of alien employment authorization, for Form I-9 itself, and for the E-Verify employment eligibility verification program. Since 2002, it has been a part of the U.S. Department of Homeland Security (H.R. 5005).

## I-9 Verification

**Reference Number:** MTAS-2012

The U.S. Citizenship and Immigration Service publishes handbooks and manuals to help employers comply with the verification rules. The most important is the M-274, Handbook for Employers: Guidance for Completing Form I-9 (Employment Eligibility Verification Form) (Rev. April 2020) (<https://www.uscis.gov/i-9-central/handbook-employers-m-274> [1]). This section summarizes the employer I-9 verification responsibilities as outlined in the handbook. Both the form and the manual have been revised and prior versions can no longer be used after September 18th, 2017.

Current law (8 U.S.C. § 1324(b)) requires all employers in the U.S. to complete an Employer Eligibility Verification form (Form I-9) for each newly hired employee to verify each employee's identity and eligibility to work. According to the manual, "to comply with the Immigration Reform and Control Act's I-9 requirements, the verification should be done by an in-person inspection of the original document that shows an employee's identity and his/her eligibility to work in the United States. A record of the employer's verification is made and retained on the Form I-9 for each person hired by the organization."

Employers should see <https://www.uscis.gov/i-9> [2] for the form and I-9 Central for the most up-to-date information.

## I-9 Central

**Reference Number:** MTAS-2013

The I-9 form must be completed for all employees hired on or after November 7, 1986, as well as for any existing employee who requires re-verification. You do not need to complete a Form I-9 for persons who are:

- Hired on or before November 7, 1986, who continued in their employment and have a reasonable expectation of employment at all times;
- Employed for casual domestic work in a private home on a sporadic, irregular, or intermittent basis;
- Independent contractors;
- Providing labor to you but are employed by a contractor providing services (i.e. employee leasing or temporary agencies); or
- Not physically working on U.S. soil.

Section 1 of the Form I-9 must be completed on or before the employee's first day of work. The new form can be completed on line or by hand. The on-line form is not for electronic submission by purely fillable. Instructions for completing for forms are also available.

The employee must provide his/her full legal name and other names used in the past. The employee must provide a home address, apartment number, city or town, state, and zip code. PO boxes are not

allowed. The employee must also provide data of birth, social security number, e-mail address and telephone number. The employee must read and attest to their citizenship or immigration status by checking the appropriate box. If the employee attests to "alien authorized to work", then the employee must provide either their alien registration number or the employer's form I-9 admission number. The employee must sign and date the form. You should ensure that the employee prints the information clearly. The instruction handbook provides that if the employee cannot complete Section 1 without assistance or if he/she needs Form I-9 translated, someone may assist him or her. The preparer or translator must then complete the Preparer/Translator Certification block on Form I-9.

Section 2 of the Form I-9 must be completed within three (3) days of the employee's actual start date. The employee must present to you an original document or documents that establish identity and employment authorization. Some documents establish both identity and employment authorization (List A documents). Other documents establish identity only (List B documents) or employment authorization (List C documents) only. The employee can choose which documents he or she wants to present.

Section 3 of the Form I-9 must be completed for employees who are rehired or whose employment authorization requires reverification or who has changed his/her name.

See <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9> [3] for more information.

## Verification of Identity and Employability

**Reference Number:** MTAS-2014

The handbook [4] provides that the employers must examine the original document or documents the employee presents to determine if it reasonably appears to be genuine and relates to the person presenting it and then complete Section 2 of the Form I-9. The employee must be physically present during the examination of the employee's documents.

One document from List A must be examined, or one document from List B and one document from List C. The employer must record the necessary information (title, issuing authority, number) and expiration date (if any); fill in the date of hire and correct information in the certification block; and sign and date the form. Signing the form attest to physically examining the documents provided. Complete the form by entering the business name and address.

Any document(s) from the list of acceptable documents presented by the individual that reasonably appear on their face to be genuine and to relate to the person presenting them must be accepted. Return the original documents to your employee when finished.

## List A Documents

**Reference Number:** MTAS-2015

The following documents establish both identity and employment authorization from List A of the list of acceptable documents:

- U.S. Passport or 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 immigrant visa (MRIV)
- Employment Authorization Document (Card) that contains a photograph (Form I-766)(including expired EADs in conjunction with Forms I-797 bases n an EAD automatic extension in certain circumstances
- In the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's non-immigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form

- 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 non-immigrant admission under the Compact of Free Association Between the United States and the FSM or RMI.

Employers presenting a List A document should not be asked to present any other documents.

## Verification of Identity and Employability - Online

**Reference Number:** MTAS-2125

The USCIS has published an online version of the Form I-9. The online version is easier to complete on a computer. Enhancements include drop-down lists and calendars for filling in dates, on-screen instructions and checks for each field, easy access to the full instructions, and an option to clear the form and start over. When the employer prints the completed form, a quick response (QR) code is automatically generated, which can be read by most QR readers.

USCIS has also developed a Form I-9 Desktop Widget. With one click of the widget and you can go to an online, fillable form-I-9, Employment Eligibility Verification, right from your computer desktop. It requires that Java must be installed along with Internet Explorer 5.5 or later and Adobe Reader Plugin. Windows PC's must have at least a 32 bit OS with 32 bit JVM, 64 bit OS with 32 or 64 bit JVM. You can download the widget from <https://www.uscis.gov/i-9-central/form-i-9-desktop-widget-download> [5].

## List B Documents

**Reference Number:** MTAS-2016

List B documents [6] establish identity only for individuals 18 years of age or older and must not be expired. The list includes:

- 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, eye color, and address.
- 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.
- 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

Acceptable List B documents for persons under age 18 who are unable to present a document list above include:

- School record or report card
- Clinic, doctor or hospital record
- Day-care or nursery school record

For minors under the age of 18 and certain individuals with disabilities who are unable to produce any of the listed identity documents, special notation may be used in place of a List B document.

Employees who chose to present a List B document must also present a document from List C for Section 2.

## Documents for Minors

**Reference Number:** MTAS-2017

For minors under the age of 18 and certain individuals with disabilities who are unable to produce any of the listed identity documents, special notation may be used in place of a List B document.

If a minor (a person under the age of 18) is unable to present a List A document or an identity document from List B, the employer should have the Form I-9 completed as follows:

- A parent or legal guardian must complete Section 1 and write "individual under age 18" in the space for the employee's signature.
- The parent or legal guardian must complete the "Prepare/Translator Certification" block;
- Enter the employee's name from Section 1 at the top of Section 2;
- Write "Individual under age 18" in Section 2, under List B, and
- The minor must present a List C document showing his/her employment authorization. Record the required information in the appropriate space in Section 2.

An individual with a disability, who is placed in a job by a non-profit organization, association, or as part of a rehabilitation program, who cannot present a List A document or an identity document from List B, should complete Form I-9 as follows:

- A representative of the non-profit organization, a parent or legal guardian must complete Section 1 and write "Special Placement" in the space for the employee's signature;
- The representative, parent or legal guardian must complete the "Preparer/Translator Certification" block;
- Enter the employee's name from Section 1 at the top of Section 2;
- Write "Special Placement" in Section 2, under List B; and
- The employee with a disability must present a List C document showing his/her employment authorization; and record the required information in the appropriate space in Section 2.

## List C Documents

**Reference Number:** MTAS-2018

Documents from List C [7] establish employment authorization and include:

- U.S. Social Security account number card other than one that specifies on the face that (1) the issuance of the card is not valid for employment in the United States (Note – A copy (such as a metal or plastic reproduction) is not acceptable), (2) the card is valid for work only with INS authorization, and (3) the card is valid for work only with DHS authorization.
- Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545, DS-1350, FS-240)
- Original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal
- Native American tribal document
- U.S. Citizen Identification Card (Form I-197)
- Identification Card for Use of Resident Citizen in the United States (Form I-179)
- Employment authorization document issued by Department of Homeland Security (other than those listed under List A). For examples, please visit [uscis.gov/i-9-central](https://uscis.gov/i-9-central) [8].

## Special Categories

**Reference Number:**

## MTAS-2020

Special rules apply when verifying the employment authorizations for other special categories also exist. Among the categories are:

- Lawful Permanent Residents
- Native Americans
- Refugees and Asylees (Form I-94 or I-94A)
- Temporary Protected Status (Form I-766)
- Exchange Visitors and Students (Form DS-2019)
- F-1 Non-Immigrant Students (Foreign students pursuing academic and language training programs)
- M-1 Non-Immigrant Students (Foreign students pursuing non-academic or vocational studies (Form I-20))
- H-1B Special Occupations
- H-2A Temporary Agricultural Worker Program

## Rehiring and Re-verifying Employees

**Reference Number:** MTAS-2021

When an employer rehires an employee, the employer must ensure that the individual is still authorized to work. This is done by completing a new Form I-9 or the employer may re-verify or update the original form by completing the Reverification and Rehires section (Section 3). If an employee, who has previously completed a Form I-9, is rehired, the employer may re-verify on the employee's original Form I-9 if:

- The employer rehires the employee within three years of the initial date of hire; or
- The employee remains employment authorized as indicated on the previous Form I-9;
- The employee's previous grant of employment authorization has expired, but he/she is now eligible to work under a new grant of employment authorization;
- If you already used Section 3 of the employee's previously completed Form I-9.

To re-verify, the employer must:

- Record the date of rehire in Block B of Section 3;
- Record the document title, number and expiration date (if any) of the document(s) the employee presented in Block C;
- Sign and date Section 3;
- If re-verifying on a new Form I-9, write the employee's name at the top of page 2 and complete Section 3; and
- Re-verify the employee on a new form if the previous version is no longer valid.

**NOTE: U.S. Citizens and noncitizen nationals never need reverification.**

To update an employee's name (optional), the employer must:

- Record the date of rehire in Block B and the employee's new name, if applicable in Block A of Section 3;
- Sign and date Section 3; and
- If updating on a new Form I-9, write the employee's name at the top of page 2 and use Section 3 of the new Form I-9 to update, retaining the new Form I-9 with the previously completed revision.

## Correcting Form I-9

**Reference Number:** MTAS-2023

If you discover an error on the employee's Form I-9, you should bring the form into compliance immediately and ask the employee to correct the error. Employers may only correct errors made in Section 2 or Section 3 of Form I-9. If you discover an error in Section 1 of the employee's Form I-9, you should ask your employee to correct the error.

The best way to correct the form is to:

- Draw a line through the incorrect information.
- Enter the correct information.
- Initial and date the correction.

To correct multiple recording errors on the form, redo the section on a new Form I-9 and attach it to the old form. Complete a new Form I-9 if major errors (such as entire sections being left black or Section 2 being completed based on unacceptable documents) need to be corrected. A note should be included in the file regarding the reason you made changes to an existing Form I-9 or completed a new Form I-9.

Be sure that you **DO NOT** to conceal any changes made on the form (other than simple notation errors when copying document information). Doing so may lead to increased liability under federal immigration laws.

If you have made changes on a Form I-9 using correction fluid, it is recommended that you attach a signed and dated note to the corrected Form I-9 explaining what happened. More information about making corrections to the form can be found at I-9 Central [9].

## Record Maintenance and Retention

**Reference Number:** MTAS-2024

The Form I-9 must be maintained for as long as the individual works for you. Once the individual's employment has terminated, the Form I-9 must be maintained for at least three years after the date of hire or one year after the date of termination, whichever is later. The handbook provides that "the forms can be retained in paper, microfilm, microfiche, or electronically".

Form I-9 can be signed and stored in paper format. A simple photocopy or printed I-9 form can help ensure that the employee received the instruction for completing the form. You may retain the completed paper forms on-site, or at an off-site storage facility, for the required retention period, as long as the employer is able to present the form within three days of an inspection request from DHS, OSC, or the U.S. Department of Labor.

8 C.F.R. Part 274a.2(b)(2)(iii) provides that Form I-9 may also be stored on microfilm or microfiche or electronic version of the form. You only have to keep the pages of the Form I-9 which you or the employee entered data. To do so:

- Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be 20 years or more.
- Use well-maintained equipment to create and view microfilms and microfiche that provides clear viewing and can reproduce legible paper copies. DHS must have immediate access to clear, readable documents should they need to inspect the employer's forms.
- Place indexes either in the first frame of the first roll of film, or in the last frames of the last roll of film of a series.

USCIS provides a "Portable Document Format" (PDF) printable form I-9 from its website, <http://www.uscis.gov/i-9> [10]. Employers may electronically generate and retain Form I-9 as long as:

- The resulting form is legible;
- No change is made to the name, content, or sequence of the data elements and instructions;
- No additional data elements or language are inserted;
- The employee receives Form I-9 instructions; and



- The standards specified under 8 C.F.R. § 274a.2(e) are met.

The standard specifies that to store records electronically, the employer may complete or retain the forms in an electronic generation or storage system that includes:

- Reasonable controls to ensure the integrity, accuracy, and reliability of the electronic storage system.
- Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored record, including the electronic signature, if used.
- An inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Form I-9, including the electronic signature, if used.
- A retrieval system that includes an indexing system that permits searches by any data element.
- The ability to reproduce legible paper copies.

Part Three of the handbook [4], Guidance for Completing Form I-9, now includes information about electronically signing and retaining I-9 forms. If you complete Form I-9 electronically using an electronic signature, your system for capturing electronic signatures must allow signatories to acknowledge that they read the attestation and attach the electronic signature to an electronically completed Form I-9. In addition the system must:

- Affix the electronic signature at the time of the transaction;
- Create and preserve a record verifying the identity of the person producing the signature; and
- Provide a printed confirmation of the transaction, at the time of the transaction, to the person providing the signature.

If you retain Forms I-9 electronically, you must implement an effective records security program that:

- Ensures only authorized personnel have access;
- Provides for backup and recovery of records;
- Ensures that employees are trained to minimize risk of unauthorized alteration or erasure of electronic records; and
- Ensures that whenever an individual creates, completes, updates, modifies, alters, or corrects an electronic record, the system creates a secure and permanent record that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

You may choose to copy or scan documents an employee presents when completing Form I-9, which you may, but are not required to do, retain with his/her Form I-9. If copies or electronic images of the employee's documentation are made, they must either be retained with Form I-9 or stored with the employee's records.

## Unlawful Discrimination and Penalties

**Reference Number:** MTAS-2025

As an employer, you can violate federal law by using the Form I-9 in a discriminatory manner. Employer sanctions and anti-discrimination provision of the Immigration and Nationality Act (INA) were added by the Immigration Reform and Control Act and prohibits four types of unlawful conduct:

- Citizenship or immigration status discrimination;
- National origin discrimination;
- Unfair documentary practices during the Form I-9 and E-Verify process (document abuse); and
- Retaliation or intimidation

Discriminatory documentary practices related to verifying the employment authorization and the identity of employees during Form I-9 or E-Verify process is called "document abuse" according to the

handbook. Document abuse occurs when employers treat individuals differently on the basis of national origin or citizenship or immigration status in the Form I-9 or E-Verify process. Document abuse can be categorized into four types of conduct:

- Improperly requesting that employees produce more documents than are required;
- Improperly requesting that employees present a particular document;
- Improperly rejecting documents that reasonably appear to be genuine and belong to the employee presenting them; and
- Improperly treating groups of applicants differently when completing Form I-9, such as requiring certain groups of employees who look or sound foreign to produce particular documents the employer does not require other employees to produce.

Immigration status or citizenship discrimination occurs when employees are treated differently based on their real or perceived citizenship or immigration status in regard to hiring, firing, or recruitment or referral for a fee. Employer must treat all groups the same.

When an employer treats employees differently in the employment process based on their national origin, that behavior constitutes national origin discrimination. An employee's national origin relates to the employee's place of birth, country of origin, ethnicity, ancestry, native language, accent or the perception that they look or sound "foreign".

The handbook [4] specifically states that "retaliation occurs when an employer or other covered entity intimidates, threatens, coerces, or otherwise retaliates against an individual because the individual has filed an immigration-related employment discrimination charge or complaint; has testified or participated in any immigration-related employment discrimination investigation, proceedings, or hearing; or otherwise asserts his/her rights under the INA's anti-discrimination provisions."

The Office of Special Council for Immigration-Related Unfair Employment Practices, Civil Rights Division, Department of Justice (OSC), enforces the anti-discrimination provisions of the INA. Title VII of the Civil Rights Act of 1964 (Title VII), as amended, also prohibits national origin discrimination, among other types of conduct. OSC and EEOC share jurisdiction over national origin discrimination charges. Generally, the EEOC has jurisdiction over larger employers with 15 or more employees, whereas OSC has jurisdiction over smaller employers with between four and 14 employees.

The DHS or an administrative law judge may also impose penalties if it is revealed that an employer knowingly hired or knowingly continued to employ an unauthorized worker, or failed to comply with the employment eligibility verification requirements with respect to employees hired after November 6, 1986. "If DHS or an administrative law judge determines that you knowingly hired unauthorized aliens, continued to employ aliens knowing that they were not authorized or have become unauthorized to work in the United States, or practiced unlawful discrimination, you may be ordered to cease and desist from such activities and pay a civil penalty. The penalty can also include possible imprisonment. Failure to properly complete, retain, and/or make available for inspection Forms I-9 could result in a civil penalty for each violation."

## E-Verify

**Reference Number:** MTAS-1938

On June 11, 2008, then President George W. Bush amended Executive Order 12989 to direct all federal departments and agencies to require contractors to use an electronic employment eligibility verification system to verify the employment authorization of employees performing work under a federal contract. The DHS designated E-Verify as the electronic employment eligibility verification system that all federal contractors must use.

Formerly referred to as the Basic Pilot Program, E-Verify is an Internet-based system operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA). E-Verify is voluntary and free to employers and provides an automatic link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. E-Verify works by electronically comparing the information on an employee's Form I-9 with SSA and DHS records to verify the identity and employment eligibility of newly hired employees.

On September 17th, 2018, E-Verify expanded to access Department of Motor Vehicles records. Now, if an employee presents a driver's license or state ID card as a list B document and if the document is issued by one of the states and territories under E-Verify's expanded access, E-Verify will prompt the user to enter the document information. E-Verify is using this process to prepare for an expansion of driver's license and state ID verification capabilities.

## E-Verify for Federal Contractors

**Reference Number:** MTAS-2117

On November 14, 2008, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) published the Federal Acquisition Regulation (FAR) final rules (FAR case 2007-013, Employment Eligibility Verification) that implemented the amended Executive Order 12989. The FAR, effective September 8, 2009, is a set of rules and regulations used to manage the way the federal government acquires supplies and services with appropriated funds.

Also known as the "E-Verify Federal Contractor Rules," the FAR rules direct federal agencies to require many federal contractors to use E-Verify. It requires federal contractors, through language inserted into their federal contracts, to agree to use E-Verify to confirm the employment eligibility of all persons hired during a contract term, as well as their current employees who perform work under a federal contract. Title 48, Subpart 22.1802(a).

Is your city required to use E-Verify? It depends. The E-Verify federal contractor rules only affect federal contractors who were awarded a new contract on or after September 8, 2009, that includes the FAR E-Verify clause (48 C.F.R., Subpart 22.18). E-Verify contracts must also have a period of performance of 120 days or more, a value exceeding the simplified acquisition threshold of \$150,000 and at least some portion of the work under the contract must be performed in the United States. Title 48, Subpart 22.1803(b).

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to a prime contractor or another subcontractor. Title 48, Subpart 22.1802(2). Subcontractors also may be subject to the FAR E-Verify clause if: (1) the prime contractor includes the FAR clause; (2) the subcontract is for commercial or non-commercial services or construction; (3) the subcontract has a value of more than \$3,000; and (4) the subcontract includes work performed in the United States. Subcontractors who are suppliers, however, are not subject to the E-Verify federal contractor rules. Title 48, Subpart 52.222.54(e).

If your federal contract contains the FAR E-Verify clause, subject to certain exceptions, you must use E-Verify to confirm the employment authorization of:

- All persons hired during the contract terms and
- Current employees who perform work under the federal contract within the United States.

To verify these individuals, according to Title 48, Subpart 52.222.54(b), the employer must:

- Enroll in E-Verify within 30 days of the contract award date and
- Use E-Verify to verify that all your new hires and existing employees working directly on federal contracts are authorized to work in the United States.

8 C.F.R. Part 274a(2) provides that after hiring a new employee and completing the Form I-9 required for all new hires (regardless of E-Verify participation), the employer must submit a query into the E-Verify system that includes information from sections 1 and 2 of the form I-9, including:

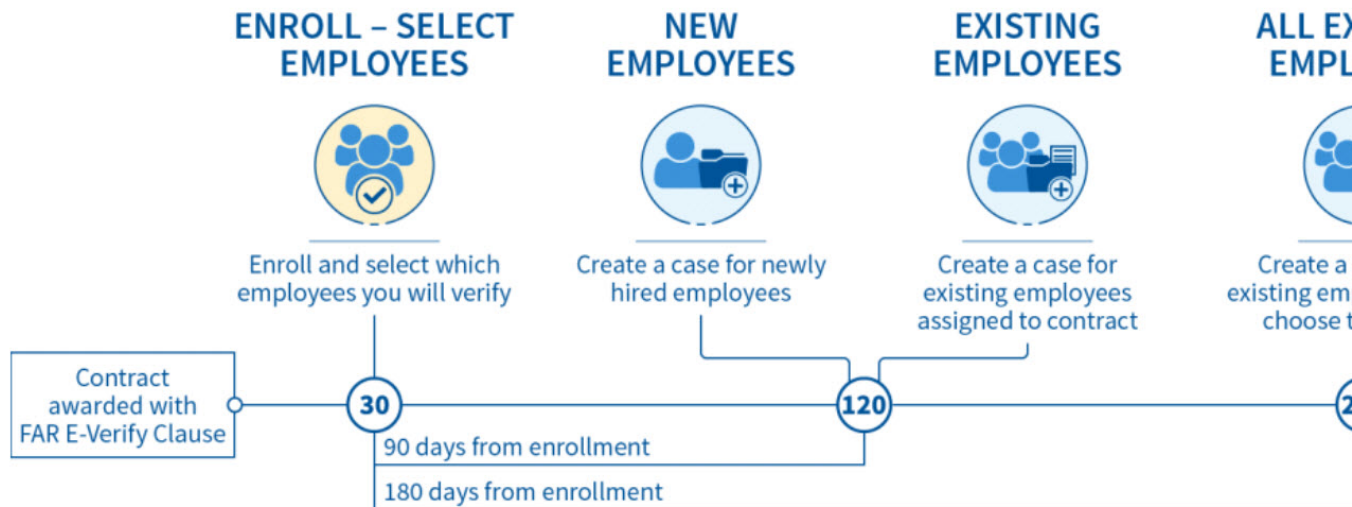
- Employee's name and date of birth;
- Social Security Number (SSN);
- Citizenship status he or she attest to;
- A number or I-94 number (if applicable);
- Type of document provided on the Form I-9 to establish work authorization status; and
- Proof of identity and its expiration date, if applicable.

If your federal contract does not contain the FAR E-Verify clause, you are **not required** to enroll in and use E-Verify as a federal contractor but may participate voluntarily.

If your city has federal contracts issued after the September 8, 2009, date that contains the FAR E-Verify clause and your city is not yet enrolled, you must (Title 48, Subpart 52.222.54(b)(1)):

- Enroll in E-Verify as a federal contractor with FAR E-Verify clause within 30 days of the award date of a contract. You can register online for E-Verify at <https://e-verify.uscis.gov/enroll/> [11].
- Begin to use E-Verify to verify all newly-hired employees who are working within the United States within 90 calendar days of your enrollment date (unless you are an organization that qualifies for an exception).
- Create a case for each existing employee assigned to the contract within 90 calendar days of enrolling in E-Verify or 30 calendar days of the employee's assignment to the contract, whichever date is later; or
- If the Federal contractor chooses to verify the entire workforce, create a case for all existing employees within 180 calendar days of enrollment in E-Verify or within 180 days of notifying E-Verify of the decision to exercise this option.

### Timeline for New Federal Contractor Enrollment in E-Verify



If your city is already enrolled in E-Verify but not designated as a federal contractor with FAR E-Verify clause, you must do the following:

- **Do not re-enroll in E-Verify. Update your “Maintain Company” page to “Federal Contractor”** with FAR E-Verify clause within 30 calendar days of the award date of a new federal contract that contains the FAR E-Verify clause.
- After updating your “Maintain Company” page, if your city has been selectively using E-Verify at certain hiring sites but not others, you must begin using E-Verify at all of your city’s hiring sites and where you will be verifying any existing employees.
- As an existing user of E-Verify, you are required to verify new hires within three days of hire. If you are already verifying new hires under a Memorandum of Understanding, you must continue to do so.
- Initiate verification of all existing employees assigned to a qualifying contract within 90 calendar days of designating your city as a federal contractor with FAR E-Verify clause in E-Verify or 30 calendar days of the employee’s assignment to the contract, whichever date is later.
- When E-Verify asks you which employees you will verify, the selection you make will affect the 180-day time period to verify all existing employees.

Some employees are exempt from the E-Verify requirements, and employers are not permitted to verify these employees in E-Verify. Other employees are not required to be verified, but employers may choose to verify them. Employees exempt from E-Verify are (1) those individuals hired on or before

November 6, 1986, and continuing in employment with the same employer; and (2) employees previously confirmed as authorized to work in E-Verify.

The following organizations awarded a federal contract that includes the FAR E-Verify clause are only required to use E-Verify for new hires and existing non-exempt employees who are working directly under contract. Title 48, Subpart 22.1802(b)(2):

- State and local governments;
- Institutes of higher education;
- Governments of federally recognized Native American tribes; and
- Sureties performing under a takeover agreement entered into with a federal agency under a performance bond.

Your city must indicate that your organization qualifies for the exception when you enroll in E-Verify or, if your city is already enrolled, when you update your city profile.

## Tennessee Lawful Employment Act (TLE Act)

**Reference Number:** MTAS-2070

The Tennessee Lawful Employment Act (TLE) (T.C.A. §§ 50-1-701- 50-1-715) was signed into law June 7, 2011, and requires all employers in Tennessee to demonstrate that they are hiring and maintaining a legal workforce either by enrolling and verifying the employment eligibility of all newly-hired employees through the federal E-Verify program or request all newly-hired employees to provide identity and employment I-9 authorization documents. Valid documents under the Tennessee Lawful Employment Act per T.C.A. § 50-1-703(a)(1)(A) include:

- A valid Tennessee driver's license or photo identification;
- A valid driver's license or photo identification from another state where the license requirements are at least as strict as those in Tennessee;
- A birth certificate issued by a U.S. state, jurisdiction or territory;
- A U.S. government-issued certified birth certificate;
- A valid, unexpired U.S. passport;
- A U.S. certificate of birth abroad (DS-1350 or FS-545);
- A report of birth abroad of a U.S. citizen (FS-240);
- A certificate of citizenship (N560 or N561);
- A certificate of naturalization (N550, N570, or N578);
- A U.S. citizen identification card (I-97 or I-179);
- A valid alien registration document; or
- Other proof of employee's immigration status and authorization to work in the United States recognized by the Department of Homeland Security.

Additionally, if your city hires non-employees, such as independent contractors, you are required to request and maintain a copy of either a valid Tennessee driver's license or photo ID license. The employment verification provisions apply to all state and local government agencies no later than January 1, 2012.

Under T.C.A. § 50-1-703(b)(1-3), the employment verification provisions will be phased in as follows:

- All state and local government agencies must be enrolled and participate in E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.
- All private employers with 500 or more employees must be enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than January 1, 2012.

- All private employers with 200 to 499 employees must be enroll and participate in E-Verify, or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2012.
- All private employers with six to 199 employees must be register and utilize E-Verify or request and maintain an identity/employment authorization document from a newly hired employee no later than July 1, 2013.
- All private employers with 50 or more employees must be using E-Verify in addition to complying with the federal I-9 requirements by January 1, 2017.
- All private employers with less than 50 employees can still make a choice about using E-Verify for all newly hired employees or requesting and maintaining documents under the TLEA's list of authorized identity and employment eligibility documents.

To verify individuals using E-Verify under the TLE Act, employers must:

- Enroll in E-Verify within 30 days of the contract award date, and
- Use E-Verify to verify that all new hires and existing employees working directly on federal contracts are authorized to work in the United States.

The TLE Act (T.C.A. § 50-1-103(c)) provides that employers **are not required** to use E-Verify if the employer requested from the employee, received and documented the “lawful resident verification information” consistent with the employers requirements under the Immigration Reform and Control Act of 1986 (I-9). The Tennessee Lawful Employment Act also provides that if, however, an employer uses E-Verify, it is a defense to a charge of hiring illegal aliens. Obtaining one of the listed documents, on the other hand is not a defense if that is the only evidence the employer has.

For employers without Internet access, the TLE Act allows such employers to enter into a Memorandum of Understanding with the Tennessee Department of Labor and Workforce Development, and permits this agency to enroll the employer in the E-Verify program and conduct employment verification checks of newly hired employees through E-Verify on behalf of the employer. T.C.A. § 50-1-703(a)(5). An employer who has requested this service from the Tennessee Department of Labor and Workforce Development, but has not received assistance will not be in violation of the act (T.C.A. § 50-1-703(a)(2)). Alternatively, the act allows employers to utilize the services of a third party agent to conduct the E-verification process for newly hired employees. T.C.A. § 50-1-703(a)(4).

Under the TLE Act, employers must maintain a record of results generated by E-Verify for three years from the date of hire or one year from the date of termination, whichever is later. Employers who elect to verify the employment eligibility of newly hired employees by requesting an identity and employment authorization document, rather than enroll in E-Verify, must retain this documentation for three years after the documentation is received or for one year after the employee (or non-employee, whichever is the case) stops providing services or labor, whichever is earlier. T.C.A. § 50-1-703(a)(3)(A).

The penalties for violation of the TLE Act are stiff, to say the least. They are outlined below:

- First offense: \$500 for the civil penalty, plus \$500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(a));
- Second Offense: \$1,000 for the civil penalty, plus \$1,000 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(b)); and
- Third or Subsequent Offense: \$2,500 for the civil penalty, plus \$2,500 per worker not verified (T.C.A. § 50-1-703(a)(6)(f)(1)(c)).

## E-Verify in Summary

**Reference Number:** MTAS-2119

The U.S. Citizenship and Immigration Service provides a wealth of information (<https://www.uscis.gov/e-verify/publications/manuals-and-guides/publications-manuals-and-guides> [12]) to help employers comply with the provisions of the law. A number of manuals and customer guides provide helpful information regarding immigration benefits. Form I-9 support is available to answer questions about Form I-9 and employment authorization, Monday through Friday, from 8 a.m. to 5 p.m., except when the federal government is closed.

The Office of Special Counsel for “Immigration-Related Unfair Employment Practices” (OSC) is available to answer questions about unfair immigration-related employment practices and discrimination against workers on the basis of a worker’s citizenship or immigration status, or based on the worker’s national origin, including discrimination in the Form I-9 process. The OSC’s website provides information on how to prevent discrimination, how to file a complaint against an employer and answers to frequently asked questions.

The U.S. Citizenship and Immigration Services offers a wealth of resources to help employers comply. Free webinars are available at <http://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar> [13].

A copy of the revised form can be downloaded from the web at <https://www.uscis.gov/i-9> [14]. Revisions also have been made to the *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)*(Rev. 03/08/13) and can be obtained online at <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf> [4].

## Receipts in-lieu of List A, B or C Documents

**Reference Number:** MTAS-2019

In some circumstances, the employer must accept a receipt in lieu of a List A, List B, or List C document if one is presented by an employee. Acceptable receipts include:

- A receipt for a replacement of a lost, stolen, or damaged document;
- The arrival portion of the Form I-94 or I-94A containing a temporary I-551 stamp and photograph;
- The departure portion of Form I-94 with an unexpired refugee admission stamp

When a receipt is provided, the employer enters the word "receipt" and its document number in the document number space, and enters the last day that the receipt is valid in the "Expiration Date" field. A receipt indicating that an initial or extension of an expiring employment authorization document (Form I-776) is not acceptable. Additionally, receipts are not acceptable if employment last less than three (3) business days.

## Updating Form I-9

**Reference Number:** MTAS-2022

To update the I-9 form, the employer must

- Record the date of rehire and the employee's name, if applicable;
- Sign and date Section 3; and
- If updating on a new Form I-9, write the employee's name in Section 1.

You are not required to update Form I-9 when your employee has a legal change of name. However, it is recommended that you maintain correct information on forms I-9 and note any name changes in Section 3. Form I-9 regulations do not require that employee present documentation to show that they have changed their name. You should take steps to be reasonably assured your employee's identity and the accuracy of your employee's legal name change. Such a change may call into question your continued ability to rely on the documents presented by your employee in their previous name as reasonably relating to them. These steps may include asking the employee to provide documentation of the legal change of name to keep with Form I-9, so that your actions are well-documented if the government asks to inspect your Form I-9.

You may encounter situations other than a legal change of name where an employee informs you that their identity is different from that previously used to complete Form I-9. If your employee informs you that their name, date of birth, or Social Security number is substantially different from that previously provided on form I-9, and is unable to provide evidence linking the new information to the identity previously used, you should:

- Complete a new Form I-9.

- Write the original hire date in "The employee's first day of employment (MM/DD/YYYY)" space, and attach the new Form I-9 to the previously completed Form I-9.
- If the Section 1 information has not substantially changed but the employee has offered different evidence of work authorization, then you should examine the documentation to determine if it appears to be genuine and to relate to your employee presenting it. If so, complete Section 3 of the previous Form I-9.

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**Links:**

- [1] <https://www.uscis.gov/i-9-central/handbook-employers-m-274>
- [2] <https://www.uscis.gov/i-9>
- [3] <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9>
- [4] <https://www.uscis.gov/sites/default/files/files/form/m-274.pdf>
- [5] <https://www.uscis.gov/i-9-central/form-i-9-desktop-widget-download>
- [6] <https://www.uscis.gov/i-9-central/132-list-b-documents-establish-identity>
- [7] <https://www.uscis.gov/i-9-central/133-list-c-documents-establish-employment-authorization>
- [8] <http://uscis.gov/i-9-central>
- [9] <http://www.uscis.gov/i-9-central>
- [10] <https://www.uscis.gov/sites/default/files/files/form/i-9.pdf>
- [11] <https://e-verify.uscis.gov/enroll/>
- [12] <https://www.uscis.gov/e-verify/publications/manuals-and-guides/publications-manuals-and-guides>
- [13] <http://www.uscis.gov/e-verify/e-verify-webinars/take-free-webinar>
- [14] <http://www.uscis.gov/files/form/i-9.pdf>

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