

# Immigration Tsunami: Understanding the Tidal Wave of Compliance When Hiring Foreign Nationals

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# Overview

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- Hiring a foreign national employee **differs significantly** from hiring a U.S. citizen and requires the employer to obtain an employment-based nonimmigrant visa before the individual can work in the U.S.
- Sponsorship involves time, money and also responsibilities.
- Foreign nationals are not allowed to work for a U.S. employer until proper work authorization is issued by the U.S. government.
- Holding a **Visa** does not always mean that the person is authorized to work.

# What can you ask during the interview?

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- It is helpful to know if sponsorship is required for the candidate during the interview process.
- Employers may **lawfully ask** the following two questions regarding immigration status in an interview (recruitment) setting:
  1. Are you legally authorized to work in the U.S.? Yes or No.
  2. Do you now or will you in the future require sponsorship for employment visa status (e.g. H-1B visa status)? Yes or No.
- Employers may **NOT** ask the following:
  1. Are you a U.S. Citizen? (very limited exceptions)
  2. What country are you from?

## Time and Cap Limits

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- Failure to follow legal employment practices can subject an employer to significant penalties and fines.
- Foreign workers may have obtained visas in order to perform jobs for a specific employer. Need to file a petition to change employers.
- Most nonimmigrant visas are subject to numerical and time limits – when can employee start? How long can they work for employer?

# Immigration Status of Employees

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- USC and LPR
  - Includes Conditional Permanent Residents
- Unrestricted but Time Limited Employment Authorization
  - Usually present EAD to verify employment authorization
  - Pending Adjustment Applicants
  - Asylees and Refugees
  - Spouses of some visa holders (L and E)
  - Students (OPT or CPT)
  - DACA/DAPA
- Restricted and Time Limited Employment Authorization
  - Most Non-Immigrant Visa holders (H, L, E-3, TN, O, P....)

# Sponsorship Considerations

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- Eligibility Issue:
  - Whether any of the work-authorizing nonimmigrant visa categories will fit the job you have open and the candidate you have in mind.
  - Required wages. Can I afford them?
- Time Limits:
  - When can employee start to work?
  - How long can they work for employer?
- Other Issues and Restrictions

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# **I-9 and E-Verify Compliance**

# The Employment Authorization Verification Process

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- In 1986, Congress passed the Immigration Reform and Control Act IRCA.
- Under IRCA, employers have three primary responsibilities:
  1. Employers must verify the identity and employment eligibility of every new employee by completing the I-9 employment verification form.
  2. Employers must not **knowingly hire or continue to employ**, any person not authorized to work in the U.S.
  3. The employer must retain the I-9 form as required.
- Employers who hire or continue to employ individuals *knowing* that they are not authorized to be employed in the U.S. may face civil and criminal penalties.



# Personal Liability

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- INA defines “employer” as “individual or entity, including an *agent or anyone* acting directly or indirectly in the interest thereof...”
- Officers, directors, employees and agents of a corporation can be held criminally and civilly liable for their acts, although they were performed in their official capacity.
  - Individual must have a minimum level of knowledge of or participation in the illegal activity.

## Deadlines for Timely Completion of I-9 Form

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- Must wait for employee to accept offer of employment.
- Employee completes Section 1 **NO LATER than first day of work for pay** or before if employee has accepted job offer.
- Employer completes Section 2 **within three business** days of the date of hire of their employee (the hire date means the first day of work for pay).
- If you hire a person for fewer than three business days, Sections 1 and 2 of Form I-9 must be fully completed by the employee's first day of work for pay.

## I-9 Basics

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- All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the U.S.
  - This includes citizens and noncitizens.
  - The I-9 forms may be created and stored on paper or electronically.
- Employees must present unexpired original documentation.
  - No Copies
- Employees must present: One selection from List A or One selection from List B in combination with one selection from List C.
  - Employees choose what documents to present.
- Employer Rep who reviews documents must be the one that completes and signs Section 2 of Form I-9.

# Section 1: Employee Information and Verification

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- Must be completed by **EMPLOYEE** on or before the day of hire (when employee begins work).
  - Attest, sign and date.
- Employer is responsible for proper completion of Section 1.
- Preparer and/or Translator Certification
  - Must be completed by whomever assisted employee in the completion of Section 1.

# Section 1



## Employment Eligibility Verification

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

USCIS  
Form I-9  
OMB No. 1615-0047  
Expires 03/31/2016

► **START HERE.** Read instructions carefully before completing this form. The instructions must be available during completion of this form.  
**ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation <i>(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.)</i>						
Last Name (Family Name)		First Name (Given Name)		Middle Initial	Other Names Used (if any)	
Address (Street Number and Name)		Apt. Number	City or Town		State <input type="text"/>	Zip Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number <input type="text"/> - <input type="text"/> - <input type="text"/>		E-mail Address		Telephone Number	

- **New: Maiden Name field is now “Other Names Used”**
- **SSN is optional unless enrolled in E-Verify**
- **Email address and telephone number are optional**

# Section 1 Attestation

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

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

- A citizen of the United States
- A noncitizen national of the United States *(See instructions)*
- A lawful permanent resident (Alien Registration Number/USCIS Number): \_\_\_\_\_
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) \_\_\_\_\_. Some aliens may write "N/A" in this field. *(See instructions)*

For aliens authorized to work, provide your Alien Registration Number/USCIS Number **OR** Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: \_\_\_\_\_

**OR**

2. Form I-94 Admission Number: \_\_\_\_\_

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: \_\_\_\_\_

Country of Issuance: \_\_\_\_\_

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. *(See instructions)*

3-D Barcode  
Do Not Write in This Space

Signature of Employee:

Date (mm/dd/yyyy):

- “Alien Registration Number” vs. “USCIS Number”
- Foreign Passport Information

# Section 1: Preparer/Translator Certification

**Preparer and/or Translator Certification** *(To be completed and signed if Section 1 is prepared by a person other than the employee.)*

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

Signature of Preparer or Translator:		Date (mm/dd/yyyy):	
Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)	City or Town	State ▼	Zip Code



*Employer Completes Next Page*



- **Must be completed if employee receives assistance**

## Section 2: Employer Review and Verification

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- EMPLOYER must complete within three business days of the first day of work.
  - Must review **UNEXPIRED** original documents.
    - Employee should choose which documents to present.
    - Do not “over-document.”
    - Employer who reviews documents must sign certification.



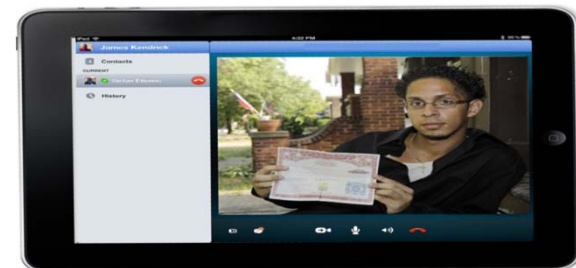
# Section 2: Don't forget Employee's Name

## Section 2. Employer or Authorized Representative Review and Verification

*(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)*

Employee Last Name, First Name and Middle Initial from Section 1:

- **Section 2 completed by employer or employer's representative**
  - **New section for employee's name on page 2**
  - **Must examine original documents**



# Section 2: Employer Review

New header area

Expanded document area

Section 2 Certification

Section 3

Section 2. Employer or Authorized Representative Review and Verification				
<i>(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)</i>				
Employee Last Name, First Name and Middle Initial from Section 1:				
List A Identity and Employment Authorization		OR	List B Identity	AND List C Employment Authorization
Document Title:	Document Title:		Document Title:	
Issuing Authority:	Issuing Authority:		Issuing Authority:	
Document Number:	Document Number:		Document Number:	
Expiration Date (if any)(mm/dd/yyyy):	Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):	
Document Title:				3-D Barcode Do Not Write in This Space
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date (if any)(mm/dd/yyyy):				
<b>Certification</b>				
I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.				
The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)				
Signature of Employer or Authorized Representative		Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name (Family Name)		First Name (Given Name)	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)			City or Town	State ▼
				Zip Code
<b>Section 3. Reverification and Rehires</b> (To be completed and signed by employer or authorized representative.)				
A. New Name (if applicable) Last Name (Family Name)		First Name (Given Name)	Middle Initial	B. Date of Rehire (if applicable) (mm/dd/yyyy)
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.				
Document Title:	Document Number:	Expiration Date (if any)(mm/dd/yyyy)		
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.				
Signature of Employer or Authorized Representative:		Date (mm/dd/yyyy):	Print Name of Employer or Authorized Representative:	

List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title:		Document Title:		Document Title:
Issuing Authority:		Issuing Authority:		Issuing Authority:
Document Number:		Document Number:		Document Number:
Expiration Date <i>(if any)</i> (mm/dd/yyyy):		Expiration Date <i>(if any)</i> (mm/dd/yyyy):		Expiration Date <i>(if any)</i> (mm/dd/yyyy):
Document Title:		<div style="border: 1px solid black; padding: 10px; width: fit-content; margin: auto;"> <p style="text-align: center;"><b>3-D Barcode</b> Do Not Write in This Space</p> </div>		
Issuing Authority:				
Document Number:				
Expiration Date <i>(if any)</i> (mm/dd/yyyy):				
Document Title:				
Issuing Authority:				
Document Number:				
Expiration Date <i>(if any)</i> (mm/dd/yyyy):				

- Employer must physically examine one document from List A  
OR  
a combination of one document from List B and one from List  
C

## Section 2: Employer Certification

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- **CERTIFICATION:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) *appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the U.S.*
- Signature and Date of person certifying under oath.

# Section 2: Employer Certification

## Certification

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

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

Signature of Employer or Authorized Representative		Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name (Family Name)		First Name (Given Name)	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)		City or Town	State	Zip Code

- **Section 2 must be completed no later than three business days after the employee begins work for pay (the “Thursday Rule”).**

# Avoid Immigration-Related Employment Discrimination

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- Employee should choose which documents to present for I-9 process.
  - Have a laminated copy of the current I-9 list of acceptable documents and provide it to employees who ask: “What document do you want?”
- Accept documents that appear to be genuine and to relate to the employee named.
  - Have clearly defined standard document review guidelines and follow them for all employees.
- Treat all prospective hires consistently.

# List of Acceptable Documents

- All documents must be unexpired, with a few exceptions.
- Employee must be given the choice of which documents to present.
- New form contains examples of restricted SS cards, which are not acceptable.

LISTS OF ACCEPTABLE DOCUMENTS All documents must be UNEXPIRED		
Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.		
LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity AND LIST C Documents that Establish Employment Authorization
1. U.S. Passport or U.S. Passpo 2. Permanent Resident Card or Registration Receipt Card (Fo 3. Foreign passport that contains temporary I-551 stamp or tem I-551 printed notation on a ma readable immigrant visa 4. Employment Authorization Do that contains a photograph (F I-786) 5. For a nonimmigrant alien auth to work for a specific employe because of his or her status: a. Foreign passport; and b. Form I-94 or Form I-94A th the following: (1) The same name as the and (2) An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and 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 admission under the Compact of Free Association Between the United States and the FSM or RMI		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
		8. Native American tribal document 9. Driver's license issued by a Canadian government authority For persons under age 18 who are unable to present a document listed above: 10. School record or report card 11. Clinic, doctor, or hospital record 12. Day-care or nursery school record
		5. Native American tribal document 6. U.S. Citizen ID Card (Form I-197) 7. Identification Card for Use of Resident Citizen in the United States (Form I-179) 8. Employment authorization document issued by the Department of Homeland Security

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

Refer to Section 2 of the instructions, titled "Employer or Authorized Representative Review and Verification," for more information about acceptable receipts.

## Section 3: Updating and Re-Verification

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- Must update when previous grant of work authorization expires.
  - Do not re-verify expired Column B documents.
  - Do not re-verify Permanent Resident Cards or U.S. passports.
- Can also be used for re-hires.
  - Only if re-hired within three years of original hire date.



# Section 3 Reverification & Rehires

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

- **Can be used for rehires within three years of previous I-9.**
- **Can be used for re-verification only if the form is still valid.**

## I-9 Retention

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- Employers are required to retain the page of the form on which the employer and the employee enter data.
- If copies of documents presented by employees are made, those too should be kept with the I-9 forms.
  - E-Verify Case Number must be written in top of I-9 form or E-Verify confirmation should be kept with I-9 records
  - E-Verify requires employers to keep copies of certain documents.
- Form I-9 must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, *whichever is later*.
- Three-Day Inspection Notice – NOI

## I-9 Retention

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1. Date the employee began work for pay	1. _____
A. Add three years to the date on line 1.	A. _____
2. The date employment was terminated	2. _____
B. Add one year to the date on line 2.	B. _____
3. Which date is later; A or B?	3. _____
C. Enter the later date.	C. _____

# Electronic I-9 Forms

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- Minimum Requirements:
  - Resulting form is legible with no change to name, content or sequence to data elements and instructions.
  - Reasonable controls to ensure integrity, accuracy and reliability of system.
  - Reasonable controls to prevent and detect unauthorized use: creation, deletion, alteration or deterioration of records.
  - Inspection and QA program.
  - Retrieval System with proper indexing to allow viewing and reproduction of selected records.
- Regulations: 8 CFR §274a.2

# Electronic I-9 Forms

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- Minimum Performance Standards:
  - Secure database
  - Password-protected, unique user profiles
  - Indexing
  - Audit trails
  - Electronic summary files/spreadsheet
  - Backup redundancy
  - Confirmation of electronic signature at the time of the transaction.

# Civil Penalties for Hiring Undocumented Aliens

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- Immigration and Nationality Act (INA)
  - 1-9 Violations
    - **Paperwork Violations:** Penalties range from \$110 to no more than \$1,100 per employee.
    - **Knowing Hire Violations:** Penalties range from \$375 to \$16,000 for each unauthorized workers for repeated offenses.
- IRCA
  - Knowingly “accept” or “provide” forged or false documents to satisfy DHS hiring or employment verification requirements.
    - Penalties range from \$250 to \$2,000 for each forged document violation.

# Criminal Penalties for Hiring Undocumented Aliens

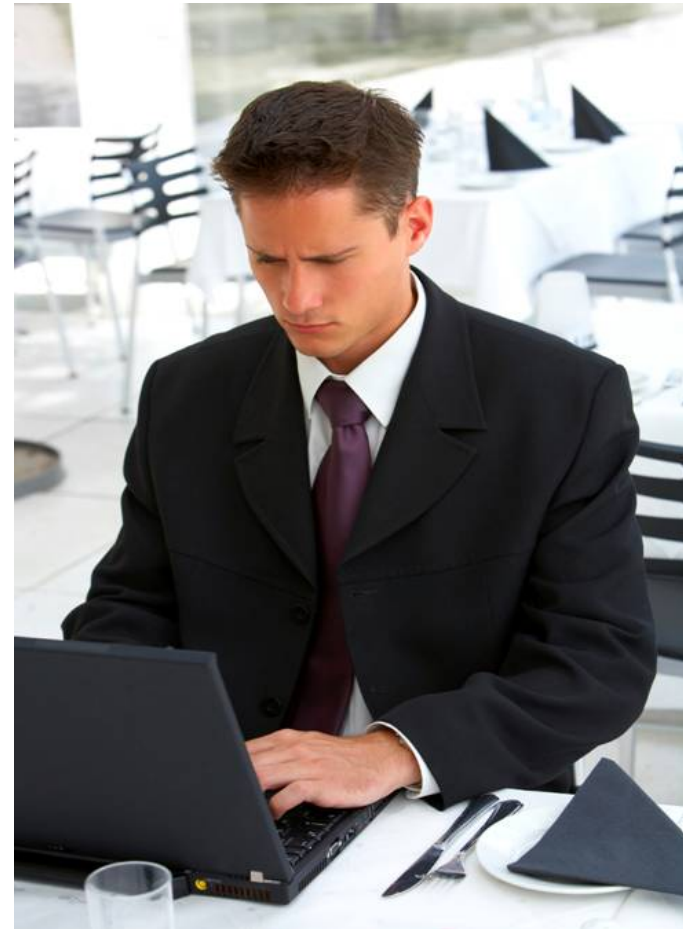
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- Immigration and Nationality Act (INA) & Immigration and Reform Control Act (IRCA)
  - Misdemeanor pattern or practice violations 8 USC § 1324a(f)
    - \$3,000 per undocumented alien and six months jail for entire pattern or practice
  - Felony Hiring 8 USC § 1324(a)(3)
    - Five years and fine is greater of \$250,000 or 2x financial gain (employed at least ten aliens during any 12-month period)
  - Felony Harboring 8 USC § 1324(a)(1)(A)(iii)
    - Five or ten years if for commercial advantage
  - Felony Money Laundering 18 USC § 1957
    - Ten years
    - Use of proceeds from a specified unlawful activity: includes most INA violations (excluding misdemeanor violation)
    - Derived from your own unlawful activity like hiring undocumented aliens
    - Paying an unauthorized alien off the books
  - Aiding and Abetting Aggravated Identity Theft 18 USC § 1028A
  - Conspiracy

# What is E-Verify?

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- Internet-based system
- Operated by Department of Homeland Security (DHS) and the Social Security Administration (SSA)
- Allows participating employers to electronically verify employment eligibility of newly hired employees





# How E-Verify Works



## How to run an E-Verify case

Form I-9: Employment Eligibility Verification. This form is used by employers to verify the identity and employment eligibility of their employees. It includes sections for identifying the employee, identifying the employer, and verifying the employee's identity and employment eligibility. The form is titled 'Form I-9' at the bottom.

Form I-9



## What E-Verify is NOT

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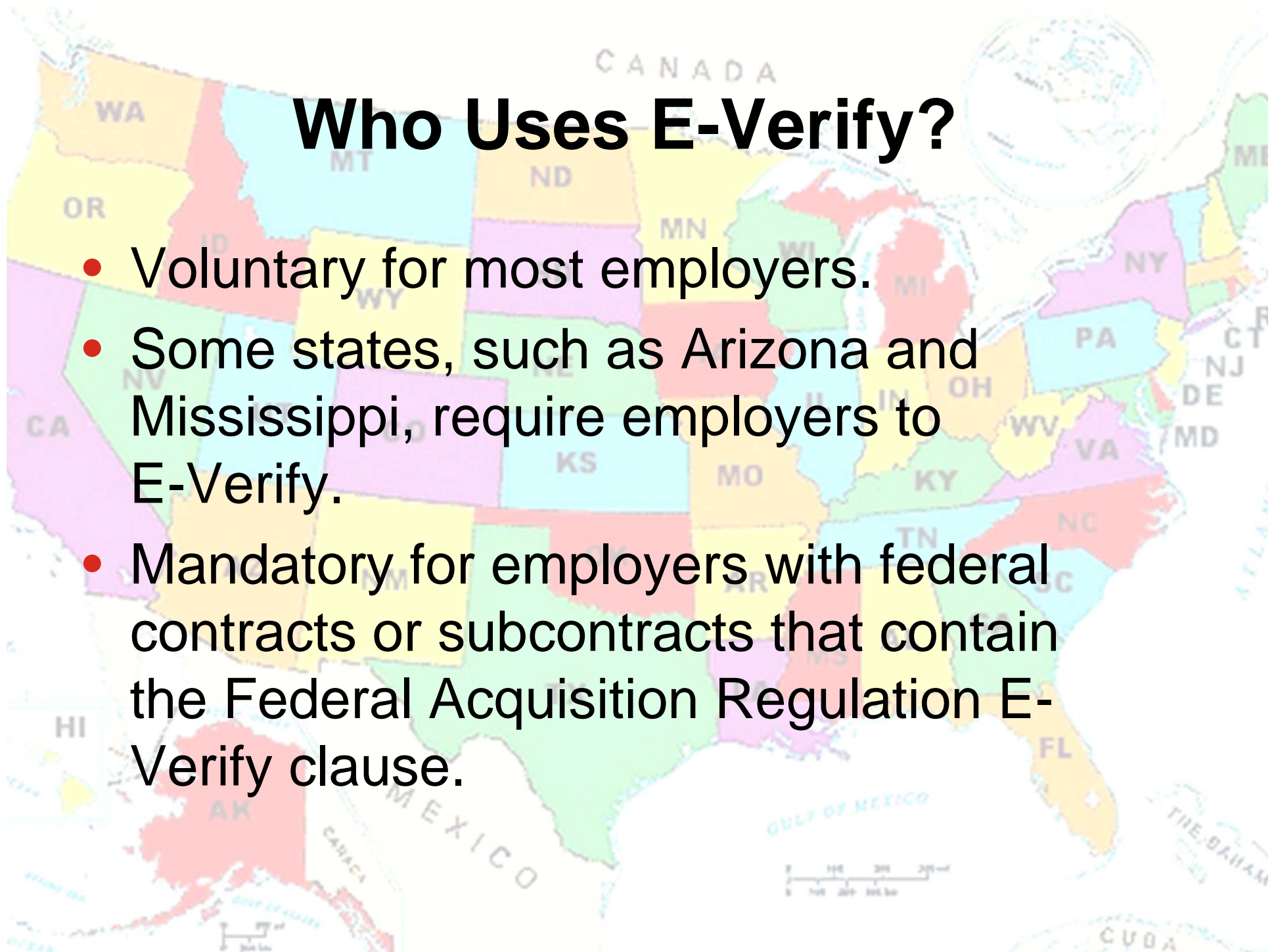
### What is E-Verify?

**E-Verify is not...**

- ...a system that provides immigration status.**
- ...used for prescreening.**
- ...a safe harbor from worksite enforcement.**

# Who Uses E-Verify?

- Voluntary for most employers.
- Some states, such as Arizona and Mississippi, require employers to E-Verify.
- Mandatory for employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation E-Verify clause.



## Some E-Verify No-No's

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- Don't use E-Verify to prescreen applicants.
- Don't take adverse action based on a case result unless E-Verify is a Final Non-confirmation.
- Don't selectively verify work authorization for newly-hired employees.



# Employer Responsibilities

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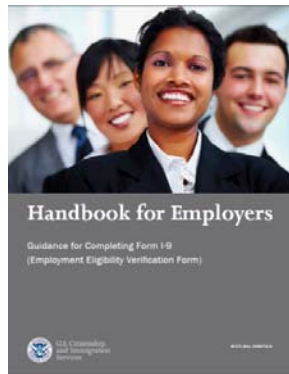


## Employer responsibilities

- Unless you are a *federal contractor whose contract contains the FAR E-Verify Clause* you can only use E-Verify to verify new hires.
- Once you begin using E-Verify, you must verify new employees **no later than the third business day** after the employee begins working for pay.
- You must apply E-Verify procedures to **ALL new hires**, regardless of citizenship status.

# USCIS Form I-9 and E-Verify Resources

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**The I-9 Handbook for Employers (M-274)**

**Latest edition: March 8, 2013**

**<http://www.uscis.gov/files/form/m-274.pdf>**



**I-9 Central**

**Frequently updated resource for I-9 news and guidance**

**<http://www.uscis.gov/I-9Central>**



**<http://www.uscis.gov/e-verify>**

# New Proposed Major Changes to E-Verify

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- Re-verification of continuing work authorization
  - Including print and retain along with I-9 Form
  - Different time-frame than required by Section 3
  
- Employee driven review of final non-confirmation results
  - Confusing process
  - Employee may still be terminated upon receipt of FNC
  - Proposed notice tells employees FNC result may be triggered by employer error

# Tennessee Lawful Employment Act

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- The *Tennessee Lawful Employment Act* (TLEA) took effect January 1, 2012, and requires employers to obtain identity/employment verification information for newly hired employees.
- It requires verifying the employment eligibility of all newly hired employees through the online E-Verify program, or requesting all newly-hired employees to provide one of the listed identity and employment authorization documents as required.



# Tennessee Lawful Employment Act

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- The Tennessee Department of Labor and Workforce Development is actively investigating employers who have failed to comply with TLEA.
- Employers must submit copies of documents or an E-verify report with the employee name and case verification number.

# Tennessee Lawful Employment Act

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- Valid Tennessee driver's license or photo identification
- Valid driver's license or photo identification from another state where the license requirements are at least as strict as those in Tennessee
- Birth certificate issued by a U.S. state, jurisdiction or territory
- U.S. government issued certified birth certificate
- Valid, unexpired U.S. passport
- U.S. certificate of birth abroad
- Certificate of citizenship
- Certificate of naturalization
- U.S. citizen identification card
- Lawful permanent resident card
- Other proof of employee's immigration status and authorization to work in the United States

# Tennessee Lawful Employment Act

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- TLEA only requires listed identification document storage for an independent contractor who is not someone else's employee. Self-employed painter or bricklayer.

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# QUESTIONS?

# Quick and Easy Guides to Labor & Employment Law App

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## App-tastic!



Our Easy Guides are now available as an app in the iTunes Store! Now you can have the same great information at your fingertips.



This app contains Quick and Easy Guides to the primary labor and employment laws of the identified states. We've also provided a summary of primary federal laws.