

What Every Legal and HR Professional in Healthcare Must Know about Immigration and I-9 Compliance

CHRIS L. THOMAS | PARTNER, HOLLAND & HART
THURSDAY, JANUARY 9, 2025

Overview of Upcoming Changes



- **Key Areas in Employment-Based Immigration to be Affected:**
 - **Immigration Benefits**
 - **International Travel**
 - **Humanitarian Programs**
 - **Worksite Enforcement**

Worksite Enforcement

DHS's Worksite Enforcement Strategy

1. Conduct I-9 audits and impose civil fines
 - DHS contracting to increase capacity to conduct audits
 - DHS plans to implement monthly quotas for field offices
2. Continue to focus on joint employment with temp/contract labor
 - Discourage using contractors as shield for undocumented workforce.
3. Arrest and prosecute employers who engage in unlawful activity

Taskforce Approach

1. DHS oversees investigation
2. DHS sends other Federal or State Agencies to investigate



Government Tools

“Worksite Enforcement” (Raids)

1. What leads to a raid?

- Investigation reveals knowing employment of undocumented workforce
- Tip from disgruntled worker or competitor (past or present)
- Administrative I-9 audit reveals high percentage of “suspect documents”
- Other agency (state or federal DOL, OSHA, etc.) discovers labor violations

2. Preparing for a Raid

- Conduct internal I-9 and documentation audit (if copies of documents retained)
- Ensure staff are properly trained and supervised on completing I-9 processes
- Enroll in E-Verify
- Prepare to address any PR issues that may result



Seeking Employee Support

Witness Development

Government focus on employment magnet:

- Prosecute individuals/entities
 - Note: Goal in every enforcement action
 - Note: Employees encouraged to turn against employers (DALE, U-visa, T-visa)
- Impose civil fines and penalties



Take a Step Back: I-9 Compliance Basics

Walking the Fine Line:

- What does DHS/HSI require?
 1. Properly/Timely Completed I-9
 2. Good Faith Belief New Hire is Eligible to Work
 3. Good Faith Belief Current Employee Continues to be Eligible to Work
 4. Properly Run E-Verify Query (where required)
 - Note: Electronic I-9s will be a focus for the upcoming administration
 - Note: The remote verification option may be discontinued
- What does DOJ/IER require?
 1. No national origin, citizenship status, immigration status discrimination
 2. No unfair documentary practices (“document abuse”)

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 (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 Other Names Used (if any)

Address (Street Number and Name) Apt. Number City or Town State Zip Code

Date of Birth (mm/dd/yyyy) U.S. Social Security Number Email Address Telephone Number

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 or conditional permanent resident (Alien Registration Number/USCIS Number).

An alien authorized to work until (expiration date) (expiration date, 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).

Signature of Employee: _____ Date (mm/dd/yyyy): _____

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

Form I-9 03/08/13 N Page 7 of 9



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. 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	
<p>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.</p>		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. 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.

Document Title	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.

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.

Form I-9



**Supplement B,
Reverification and Rehire (formerly Section 3)**

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

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

Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle Initial (if any) from Section 1.
---	---	---

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 (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	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) (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 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 (mm/dd/yyyy)
---	--	---------------------------

Additional Information (Initial and date each notation.)	<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.
--	--

Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	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) (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 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 (mm/dd/yyyy)
---	--	---------------------------

Additional Information (Initial and date each notation.)	<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.
--	--

Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	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) (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 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 (mm/dd/yyyy)
---	--	---------------------------

Additional Information (Initial and date each notation.)	<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.
--	--

Supplement B

Lists of Acceptable Documents

Various List A, List B, and List C documents not shown on current Lists of Acceptable Documents (LOAD)

New LOAD includes:

- Some acceptable receipts
- Links to M-274 Handbook for List C Item 7: *Employment authorization document issued by DHS*
- Guidance and links to information on automatic extensions
- **Note:** Automatic extensions may be dropped with new administration

LISTS OF ACCEPTABLE DOCUMENTS

All documents containing an expiration date must be unexpired.

* Documents extended by the issuing authority are considered unexpired.

Employees may present one selection from List A or a

combination of one selection from List B and one selection from List C.

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

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. Passport Card		1. 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		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
4. Employment Authorization Document that contains a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
5. For an individual temporarily authorized to work for a specific employer because of his or her status or parole: a. Foreign passport; and b. Form I-94 or Form I-94A that has the following: (1) The same name as the passport; and (2) An endorsement of the individual's status or parole 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.		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security For examples, see Section 7 and Section 13 of the M-274 on uscis.gov/i-9-central . The Form I-766, Employment Authorization Document, is a List A, Item Number 4 , document, not a List C document.
		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		
		Acceptable Receipts		
		May be presented in lieu of a document listed above for a temporary period. For receipt validity dates, see the M-274.		
• Receipt for a replacement of a lost, stolen, or damaged List A document. • Form I-94 issued to a lawful permanent resident that contains an I-551 stamp and a photograph of the individual. • Form I-94 with "RE" notation or refugee stamp issued to a refugee.	OR	Receipt for a replacement of a lost, stolen, or damaged List B document.		Receipt for a replacement of a lost, stolen, or damaged List C document.

*Refer to the Employment Authorization Extensions page on [I-9 Central](#) for more information.

Electronic Forms I-9 Requirements

System Integrity

- System must provide same level of data integrity, security, sequence, and access as paper-based processes.

Employee and Employer Roles

- Employee completes Section 1; Employer completes Section 2 and 3.

Accessibility

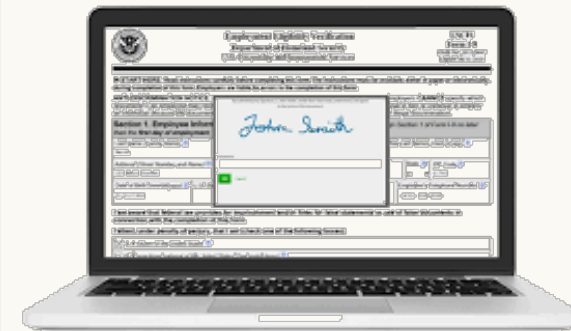
- Employers must produce electronic I-9 records (e.g., DHS, ICE) within three business days.

Electronic Authentication

- The system must capture attestation and digital signatures and be linked to signer's identity.

Audit Trail

- Requires secure audit trail, tracking who accessed or modified the form (with time, step taken).



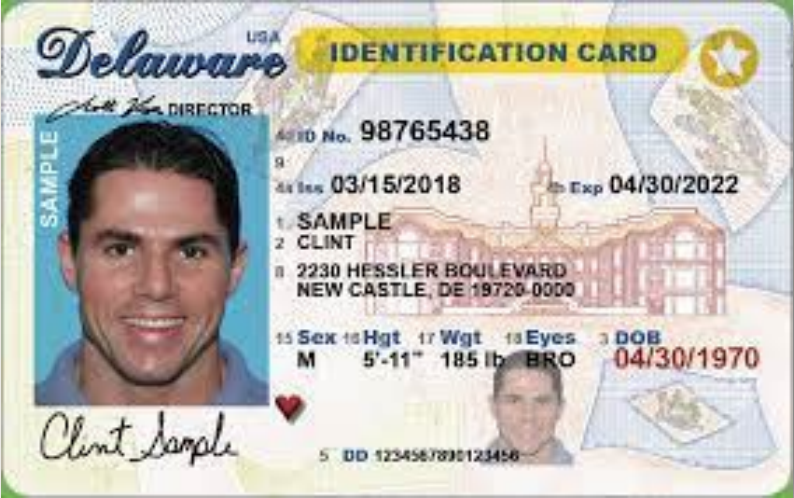
Good Faith at Hiring



Required to be a Document Expert?

- Must accept documents that “reasonably appear to be genuine and to relate to the person presenting them.”
 - But what is “reasonable”?
- Does WHD employ the same reasonableness standard?
 - Turns out document expertise is required

Other Documents



Continuing Good Faith

- **Ongoing Responsibility to Monitor Workforce**
- **Actual/Constructive Knowledge**
 - Improper/Missing Form I-9
 - Expired Temporary Document
 - Obviously Fake Documentation
 - Confession/Recorded Conversation
 - Contractors (Walmart)
 - Government Notification (DHS, SSA, IRS, etc.)



E-Verify System

Voluntary (unless Executive Order for Federal Contracts or State Law Applies)



What does E-Verify accomplish?

- **Rebuttable presumption of legal workforce**
- **No “safe harbor” from workplace enforcement**
- **Complies with FAR E-Verify clause (if applicable)**
- **Complies with state laws (10 states)**

WARNING: E-Verify has become tool for ICE and IER to target employers

- **Audit thresholds (for referral to ICE or IER)**

Civil Tools

Fines

- Paperwork Violations (up to \$2,700 per defective form)
- “Knowing” Employment of Undocumented Workers (up to \$5,400 per employee)

Contract Debarment or Suspension (Federal Contractors)

- For knowing employment of undocumented workers
- One-year increments



Criminal Toolbox



Pattern and practice in hiring undocumented workers (misdemeanor). 8 USC 1324a(f)



Knowingly hiring 10 unauthorized workers (or more) in 12-month period. 8 USC 1324(a)(3)



Harboring/shielding undocumented workers from detection. 8 USC 1324(a)(1)(iii)



Encouraging or inducing undocumented workers to remain in violation of law. 8 USC 1324(a)(1)(iv)

- Recently upheld by U.S. Supreme Court (*U.S. v. Hansen*)



Making false attestation on Form I-9 (Perjury and Visa Fraud). 18 USC 1546(b)



Forced Labor/Benefitting from Forced Labor. 18 USC 1589, 1590

How Extreme?

- Settled for \$95 million (forfeitures and civil fines)
- Three managers charged with various criminal violations.
- Allegation: Management acted with willful blindness in hiring undocumented workers
- Acting ICE Director
 - Today's judgment sends a strong, clear message to employers who scheme to hire and retain a workforce of illegal immigrants: we will find you and hold you accountable. (ICE Press Release, 09/28/2017)

Asplundh Tree Experts

Best Practices

- **IMAGE Program Suggestions:**

- Use E-Verify for all new hires.
- Establish written I-9 Compliance Policy.
- Establish compliance and training programs.
- Allow only trained personnel to complete I-9s.
- Perform annual internal I-9 audits.
- Use SSNVS for payroll review.
- Have protocol for responding to government agencies (e.g., SSA, HSI, etc.).



IMAGE Program: <https://www.ice.gov/outreach-programs/image>

Thank You! Any Questions?



Christopher L. Thomas
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, Co 80202
CLThomas@hollandhart.com