This document identifies resources for those employers who find that they do not have Forms I-9 for one or more employees.

This document is not intended to be and should not be construed as legal advice.

All employers are required to verify the identity and employment authorization of each person hired after November 6, 1986. This includes completing and retaining Form I-9, Employment Eligibility Verification, for each employee required to complete the form.

The current Form I-9 is dated 11/14/2016. This new form replaces the previous form, dated 03/08/2013, may no longer be used.

For the current Form I-9 (11/14/2016) and directions for its completion, as well as other resources regarding the Form I-9, go to USCIS webpage, I-9-Central1.

You may find the current Form I-9, including the new “smart” form at USCIS webpage, I-9, Employment Eligibility Verification. For more information on the new Form I-9, find NLBMDA’s Regulatory Update: New Form I-9, Employment Eligibility Verification; Required Starting January 22, 27, at dealer.org.

Missing or Incomplete Forms I-9

- I am missing Forms I-9 for several employees: What can I do to correct this?

  If an employer discovers a missing Form I-9, the employer and employee must complete a new Form I-9. The newly completed form should not be backdated. If the employee cannot produce acceptable documentation or refuses to complete Section 1 of the Form I-9, he or she cannot work for pay.

  For more information on correcting Forms I-9, visit I-9-Central’s webpage, Correcting Form I-9. Employers are not required to have Form I-9 for employees hired on or before November 6, 1986.

  Last Reviewed/Updated: 11/25/2014

(See, USCIS webpage, Questions and Answers.)

1 Go to https://www.uscis.gov/i-9-central.
What should an employer do when it discovers during an internal audit that (1) a Form I-9 for an employee was not completed or is missing, or (2) an entire section on the Form I-9 was left blank?

If a Form I-9 was never completed or is missing, the current version of the Form I-9 should be completed as soon as possible. If an original Form I-9 exists but either Section 1 or Section 2 was never completed, the employee (for Section 1) or the employer (for Section 2) should complete the section as soon as possible. In both scenarios, the employer should not backdate the form, but should clearly state the actual date employment began in the certification portion of Section 2. The employer should attach a signed and dated explanation of the corrective action taken.

(See, Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits.)

Retaining Form I-9

Employers must have a completed Form I-9, Employment Eligibility Verification, on file for each person on their payroll (or otherwise receiving remuneration) who is required to complete the form. Employers must also keep completed Forms I-9 for a certain amount of time after their employees stop working for them.

(See, USCIS webpage, Retaining Form I-9.)

Am I required to retain original Forms I-9 with signatures or are photocopies or faxed copies acceptable?

Employers who complete and retain Form I-9 in paper format only must retain the Form I-9 with the original handwritten signatures. Employers must retain Forms I-9 for three years after the date of hire or one year after the date the individual’s employment is terminated, whichever is later. Photocopies or faxed copies of completed Form I-9 are not acceptable to meet this retention requirement.

Employers may choose to scan and upload the original, signed forms to retain them electronically. Once these Forms I-9 are securely stored in electronic format, the original paper Forms I-9 may be destroyed.

Last Reviewed/Updated: 08/06/2015

(See, USCIS webpage, Questions and Answers.)
Key Takeaways

1. If the employer finds an employee, who was employed after November 6, 1986, does not have a completed Form I-9 on file, the employer and the employee should complete a current Form I-9 as soon as possible.

   The employer will need to contact the employee who does not have an I-9 on file, explain that the I-9 was never created, and provide the employee with the current I-9 instructions and the current List of Acceptable Documents. The employer should provide a timeframe for the employee to present documentation from the List of Acceptable Documents and to complete Section 1 of the I-9.

   It is important to note the prohibition on unfair documentary practices throughout the I-9 process, including different documentation than that found in the List of Acceptable Documents or requiring only certain documentation found on the list. The Department of Justice webpage, I-9 and E-Verify includes additional information on employee rights relative to Form I-9 and E-Verify.

2. The Form I-9 should not be backdated. The form should be dated at the time it is completed.

3. The “hire date” in Section 2 should match the date that the employee was hired and placed on payroll.

4. When completing the current Form I-9, be sure the documents to establish identify and employment authorization are listed as Acceptable Documents from List A or Lists B and C.

   Find these lists on I-9-Central’s webpage, Acceptable Documents.

5. The employer should attach a signed and dated explanation of the corrective action taken.

   For example, if the Form I-9 was never completed, the explanation should indicate which documents were submitted and are currently in the employee’s file for purposes of determining employment verification at the time of employment, the date of employment, the date the employer determined that the Form I-9 was never completed (or alternatively, the date of discovering the missing Form I-9, or the date when the employer learned of the responsibility to complete and retain the form), and the date the employer and employee completed a current Form I-9.

6. Employers must retain Forms I-9 for three years after the date of hire or one year after the date the individual’s employment is terminated, whichever comes later.

   For a quick list of does and don’ts and civil violations, see the I-9-Central’s webpage, Penalties.
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Please direct any questions or additional information to Frank Moore, NLBMDA Regulatory Counsel at frank@dealer.org.