

HR Insights

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Common Form I-9 Mistakes to Avoid

The Immigration Reform and Control Act of 1986 requires employers to hire only individuals who may legally work in the United States. To comply with the law, employers must verify the identity and employment authorization of each individual they hire by completing and retaining the Employment Eligibility Verification form (Form I-9). As a result, organizations spend a great deal of time and resources trying to comply with Form I-9 requirements.

Despite employers' best efforts, complying with Form I-9 requirements can be difficult. Unfortunately, many employers leave their organizations' Form I-9 operations to untrained staff or fail to dedicate sufficient time and resources to the process, resulting in numerous errors and untimely completion of Form I-9 tasks. Even small errors can subject employers to expensive violations, fines and penalties. In recent years, the federal government has increased its Form I-9 enforcement efforts. This makes Form I-9 compliance especially critical. By understanding common Form I-9 errors and mistakes, organizations can reduce their potential legal risks and improve their Form I-9 process.

Relying on Untrained Staff

Form I-9 appears deceptively simple, and, as a result, employers may not prioritize the process appropriately. Too often, employers assume their Form I-9 operations comply with federal requirements, including mistakenly believing their staff is properly trained to address the myriad of compliance issues that may arise when carrying out Form I-9 operations. Form I-9 compliance is difficult and rarely error-free. Untrained staff leave an organization open to risk, and their mistakes can be extremely costly.

Common errors by untrained staff include:

- Failing to complete Form I-9 or employee reverification in a timely manner
- Accepting improper employee identity and employability documents
- Recording information incorrectly on the form
- Neglecting to record the employee document's title, issuing authority and expiration date

Training individuals responsible for an organization's Form I-9 process is critical for complying with federal requirements and reducing risks of fines, penalties and audits. Many organizations assign an HR professional to be their dedicated Form I-9 expert to oversee Form I-9 operations, train others and answer questions. Employers need to ensure any employees involved in the Form I-9 process are trained on the following:

- Completing Form I-9
- Maintaining completed forms
- Storing completed forms
- Correction errors
- Reverifying expired employee documents or documents for rehires



- Purging old forms
- Conducting internal audits
- Preparing for government audits

Training individuals once is likely not enough due to the complex nature of Form I-9 requirements. Ideally, these employees need to be trained regularly to ensure they are knowledgeable of Form I-9 requirements and processes and can address any issues that may arise. Training will need to be updated to address changes to the form and the most current guidance from the U.S. Citizenship and Immigration Services (USCIS) and other federal agencies. While training may be costly and time-consuming, it can pay dividends by helping employers stay compliant. Employers can take advantage of USCIS's [free employer training](#).

Overlooking Internal Audits

Conducting internal audits of completed Forms I-9 can help employers comply with Form I-9 requirements. Despite being time-consuming and labor-intensive, internal audits typically are the best and sometimes the only systematic means to ensure compliance with federal law. While internal audits are primarily used to correct Form I-9 errors, many employers rely on audits to identify common mistakes and issues in their Form I-9 operations. This can provide employers with vital information to retrain staff, refine their Form I-9 operations and take other actions to avoid similar errors in the future. Some organizations hire vendors to assist with internal audits because they are so burdensome, but employers remain liable for any mistakes.

Internal audits help organizations discover if any current employees have not completed a Form I-9 and whether completed forms contain errors. Employers can demonstrate their good-faith efforts to comply with federal law by making a list of all forms that contain errors and documenting any corrections. Both USCIS's [Handbook for Employers](#) and [I-9 Central](#) provide resources for employers conducting internal audits.

Failing to Reverify Employment Authorization

Employers must reverify an employee's employment authorization if the document has an expiration date. An employer does this by examining the employee's new work authorization document and completing

Supplement B, formerly Section 3 of the form. If employers fail to reverify an employee's work authorization document, they may be subject to penalties and fines for knowingly employing an individual who is not authorized to work in the United States.

Employers must reverify an employee's work authorization document on or before the expiration date provided in Section 1 of Form I-9—the employee information and attestation portion of the form. Employers frequently fail to record and track the expiration dates of their employees' employment authorization documents when employees initially complete the form. As a result, many employers do not reverify their employees' work authorization or do so in a timely manner.

Reverification is further complicated by the fact that an employer is only permitted to reverify an employee's employment eligibility under limited circumstances. Doing so outside of those circumstances can result in expensive document abuse violations. Additionally, in some circumstances, reverification is not required or is subject to special rules. Employers who fail to sign Supplement B when reverification is required may be penalized or fined.

These errors commonly occur when organizations fail to assign a dedicated individual to oversee their Form I-9 operations or establish a reverification process. Employers can take steps to minimize these errors by training staff, establishing accountability and instituting processes to ensure they do not miss critical Form I-9 reverification requirements.

Improperly Making Corrections

It's common for completed Forms I-9 to contain errors or missing information. If employers discover errors or missing information, they need to correct or add information in a timely manner and document their actions. It's important for employers not to conceal any changes to Form I-9, including erasing text or whitening it out. According to USCIS guidelines, employers need to draw a line through the incorrect information and initial and date the correction with the current date. For any corrections, employers must attach a memorandum

outlining why the information needed correcting or was missing.

If employers need to correct multiple errors in a section, they may redo the section on a new Form I-9 and attach it to the originally completed form. Employers may also do this if a completed form contains major errors, such as entire sections being left blank or using unacceptable documents to complete Section 2—the employer review and verification portion of the form.

Unsupervised Employees Completing Section 1

While training HR professionals on proper Form I-9 procedures is essential, it's unrealistic to expect new hires to be familiar with the form. Best practices can reduce the overall cost and burden of an organization's Form I-9 operations. One of the simplest ways to ensure organizations comply with Form I-9 requirements at the outset is by supervising employee completion of Section 1. HR professionals or onboarding specialists can explain this section to new hires and answer any questions they may have. This can reduce errors, ensure all necessary information is provided and recorded properly and confirm appropriate documentation is provided. In some cases, new hires may complete Section 1 before their first day of work. In these situations, an employer can review the employee's completed form to ensure it's completed correctly and have the employee make any needed corrections.

Failing to Monitor Form I-9 Changes or Updates

Employers are responsible for monitoring and complying with any changes to Form I-9 rules and procedures. This requires employers to be diligent and continually monitor Form I-9 requirements. For example, the U.S. Department of Homeland Security updates Form I-9 every few years. Employers are required to use the most recent version of the form. Moreover, Form I-9 procedures and rules change or are updated from time to time. Failing to comply with any changes or updates, like using a previous version of the form, can result in expensive penalties and fines. Consequently, organizations need to establish procedures to ensure they are aware of any changes or updates to Form I-9 procedures and rules.

Summary

Form I-9 requirements impact all employers. As enforcement actions continue to escalate, Form I-9 compliance appears to be especially vital. By understanding the most common Form I-9 mistakes, employers can evaluate how well their organizations are meeting Form I-9 requirements and whether they are prepared for a possible government audit.

This article provides a general overview of common Form I-9 mistakes and is not intended to be an exhaustive list. Due to the complexities of complying with Form I-9 requirements, employers are encouraged to seek legal counsel to discuss specific issues and concerns.

For more resources on Form I-9, contact STR Benefits Consulting today.