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RLG Reference Form

I-9 Compliance

In 1986 the Immigration Reform and Control Act (“IRCA”) was passed by Congress to preserve our tradition of legal immigration while closing the door to illegal entry. The IRCA placed requirements on U.S. employers to check the employment eligibility and identity of employees. Thus, the I-9 (Employment Eligibility Verification) form was developed.

I-9 Guidelines: Acceptable Documents to Verify Identity and Work Eligibility

It is the employer’s responsibility to complete Sections 2 and 3 of the I-9 to verify both the new employee’s identity and work eligibility. On the back of the I-9 there is a list of acceptable documents. List A provides a list of documents that establish both identity and work eligibility. List B provides a list of documents that establish identity only. List C provides a list of documents that establish work eligibility only.

You must fill out either: (1) List A; OR (2) List B and List C. It is an error to fill out all three columns. It is also an error to fill in List A and List B or List A and List C.

Unacceptable Documents

Under List A, the following are not acceptable documents:

- Certificate of U.S. Citizenship (Form N-560 or N-561)
- Certificate of Naturalization (Form N-550 or N-570)
- Alien Registration Receipt Card (Form I-151)
- Unexpired Reentry Permit
- Unexpired Refugee Travel Document (Form I-571)

None of the above documents may be used to complete Section 2 of the I-9. If a new employee presents one of these documents, advise them that the law changed in 2007 and that these documents are no longer acceptable. Advise the employee to select other documents from List A or from List B and List C (but do not tell the employee which specific document(s) they must present).

New Acceptable Documents

Under List A, the following document is now acceptable:

- Unexpired Employment Authorization Document (“EAD”) issued by DHS that contains a photograph (Form I-688B and I-766).

The Form I-766 is the new EAD card, which replaced the Form I-688B. Both cards are still valid until the expiration date shown on the card.

I-9 Guidelines: Who Needs to Complete an I-9?

All employees hired by U.S. employers after November 6, 1986, must have an I-9 completed to verify both employment eligibility and identity. Please note that if the employee is performing the work entirely in a foreign country, an I-9 does not have to be completed. For example, a company may hire a person to work in a satellite office in Japan. If the employee will not perform any work in the United States, an I-9 does not have to be completed. If, however, the employee will perform some work in the United States (i.e., attending meetings, giving presentations, etc.) then an I-9 should be completed at the **beginning** of the employment relationship.

I-9 Guidelines: How Does an Employer Verify Documents?

The I-9 must be completed and verified by the employer or the employer's properly authorized agent. Employers are normally required to review, in the employee's presence, the employee's original, hard copy documents that the employee is using to establish identity and employment authorization ("Documents"). For remote employees, employers may authorize a qualified person to act as an agent for the purposes of completing the I-9. This authorization should be in writing.

Due to COVID-19, the Department of Homeland Security has enacted a temporary I-9 Requirement Flexibility Policy ("DHS's Temporary Policy"), which is currently in effect until July 31, 2023. This policy temporarily suspends the requirement to review original Documents in the employee's presence for employees who do not physically report to work at a company location on a regular, consistent, or predictable basis.

Any employer who uses the remote option offered by DHS's Temporary Policy (described below) must provide written documentation of their remote onboarding and telework policy to each employee whose Documents will be reviewed remotely. This may include notices to employees about remote work policies, statements of company remote work policies, or other documents that confirm remote work policies relevant to the COVID-19 pandemic for the employee's worksite location. You should also keep this information on file to provide to DHS and/or USCIS upon request.

Under DHS's Temporary Policy, for fully remote employees hired on or after April 1, 2021, an employer may verify the employee's Documents remotely (i.e., over video link, fax, email, etc.) and must obtain, inspect, and retain copies of the documents within three business days of completing Section 2 of the I-9.

However, an employer will need to review original Documents in the employee's presence within three business days of the earlier of the following: (1) the employee begins non-remote employment on a regular, consistent, or predicable basis; or (2) DHS's Temporary Policy expires. If an employee remains remote following the expiration of DHS's Temporary Policy, the employer may authorize a qualified person with written authorization to act as an agent for the purposes of

completing the I-9 (i.e., how the Documents are verified in the absence of the DHS's Temporary Policy).

For any employees whose Documents are initially reviewed remotely under DHS's Temporary Policy, employers will need to update the Additional Information field of Section 2 of the employee's I-9 (or in Section 3, where appropriate) after the physical inspection takes place with the following information: (1) enter "COVID-19" as the reason for the physical inspection delay; and (2) write "documents physically examined" with the date of the physical inspection.

The I-9

The I-9 contains three separate and distinct sections:

- Section 1 - Employee Information and Verification
- Section 2 - Employer Review and Verification
- Section 3 - Updating and Reverification

Section 1: Employee Information and Verification

Section 1 of the I-9 must be completed no later than the employee's first day of work. The employee must attest that they are eligible to work in the United States. The employer must review Section 1 to ensure that the employee properly completes the form in its entirety.

Note: An employer is not liable if the employee makes false statements but appears to have recorded reasonable answers. The employer is, however, required to investigate and resolve conflicting information when the documents presented contradict information provided by the employee in Section 1.

Section 2: Employer Review and Verification

Section 2 of the I-9 must be completed within three business days of the date employment begins. Except for remote employees while DHS's Temporary Policy is in effect (if the employer is operating under such policy), the employee must present original documents to establish employment eligibility and identity. Faxes or copies are not acceptable.

It is the employee's choice which documents to present to the employer for Section 2. Acceptable documents are listed on the back of the I-9. Employees must present documents that indicate their identity and their work eligibility. List A contains a list of acceptable documents that verify both identity and work eligibility. List B contains a list of acceptable documents that only verify identity. List C contains a list of acceptable documents that only verify work eligibility. An employee must present acceptable document(s) from List A OR acceptable documents from both List B and List C.

The employer must review the documents presented, complete Section 2, and sign and date the I-9. If the employee cannot produce either original documents or an acceptable receipt for one of the listed documents, **the individual must be terminated**. If a document receipt is produced, the employee must produce the original document within 90 days or be terminated. (See Section 3).

If the employee presents an acceptable receipt document, fill in the blanks for the List A column indicating the receipt number (if the receipt is for a List A document) or fill in the blanks for the List B and List C columns (if the receipt is for a List B or List C document) indicating the receipt number. On the top of the I-9 indicate: “Original documents must be reviewed by [DATE = 90 days after you sign the form]”. This notation will assist in noting that the receipt documents were used and that originals need to be verified within 90 days.

CERTIFICATION: The employer must complete the certification section by filling in the date that the employee first started working for the employer. You must fill in the date that employment began. This section must be completed within three business days of the employee’s start date. The business or organization should be entered with the city, state and zip code included. Finally, be sure to enter the day that you actually reviewed the original document(s). It is considered fraud to enter a false date. If a new employee is attending an orientation, the I-9 may be completed at orientation. If the individual does not attend orientation, complete the I-9 within three business days after the employee’s first day of work.

Section 3: Updating and Reverification

Employment re-verification must be completed when you rehire an employee or when the employee’s previous grant of work authorization has expired but they are currently eligible to work on a different basis or under a new grant of work authorization. For example: a student employee may have previously been granted work authorization under an F-1 visa but they have now applied for and received an H1B Visa with a different end date. Section 3 may be used for reverification. However, if the I-9 version used for a previous verification is no longer valid, a new I-9 must be completed.

Updating the I-9 under the Receipt Rule. If an employee presented an acceptable receipt for a document at the beginning of their employment, they must present the original document within 90 days. Acceptable receipt documents are explained in the section below.

When the employee presents the original documents, you should cross out the old information, insert the new information, and initial and date the changes made in Section 2 of the I-9. If you no longer have a copy of the I-9, then complete a new I-9 with the original documents.

Updating the I-9 for Extensions of H1-B or O visa holders. Foreign nationals who file for an extension of the following visas may continue their work eligibility for 240 days after expiration of the visa: H1-B, E, O or P visas.

A. If the hiring unit has a copy of the original I-9, then fill out Section 3 of the I-9 as follows:

- **New name:** If the name has changed, insert the new name. If the name is unchanged, draw a line through the box.
- **Date of rehire:** Draw a line through the box
- **Document title:** Write “Receipt for [*H-1B, E, O, P, etc. (select as applicable)*] visa extension”

- **Document #:** Write “Receipt # [number on the receipt document]”
- **Expiration date:** Add 240 days from the original expiration date and enter that number.

Sign and date the I-9 on the last line of the form.

- B. If the hiring unit does not have a copy of the original I-9, then fax the following note and a copy of the receipt document for the extension application:

“Pursuant to 8 CFR 214a.12(b)(20), [EMPLOYEE’S NAME] is eligible to continue to work for an additional 240 days after the expiration of his/her visa for the same employer as long as there is a timely filed and pending application to extend this visa. Evidence of the pending extension application is attached. Please update your records and the original I-9 to indicate the new expiration date of [INSERT NEW DATE].”

When the extension is approved, the employee can complete a new Form I-9.

What If Documents Have an Expiration Date?

A system should be set up to remind the employer when documents used to verify work eligibility will be expiring. The reminders should be for six months, 90 days, and 30 days before expiration, as well as at expiration, unless the I-9 has been properly updated before then. Because the process for getting certain documents renewed can take up to six months, the foreign national should be encouraged to begin the process of getting renewed documents as soon as possible to avoid any disruption in work.

The employee and employer must complete a new I-9 unless the original I-9 can be retrieved, and Section 3 completed. If an employee fails to produce documentation prior to expiration of documents, their employment will be terminated.

Can an Employee Provide a Document Receipt?

Generally, a receipt document is not an acceptable document to verify either identity or work eligibility if the receipt indicates that an initial application for an original document is pending. For example, if someone is applying for a social security card for the first time, a receipt is not an acceptable document for completion of the I-9. However, there are three situations where a receipt *is* acceptable:

- The receipt is for replacement of a document from List A, B, or C because the original was lost, stolen, or damaged. (The actual document must be produced within 90 days of hire.)
- The receipt is a temporary I-551 stamp (green card) in the employee’s passport or on an I-94 Form. (The actual I-551 Form must be submitted within 180 days of employment.)
- The receipt takes the form of a refugee admission stamp on an I-94 Form. (An employment authorization card, Form I-766, or a Social Security card must be submitted within 90 days of hire.)

How Long Must Employers Retain I-9s?

The I-9 must be retained for three years after the date the employee begins working or one year after the employee's employment ends, whichever is later.

What Are the Penalties for Non-Compliance?

Employers are responsible for not knowingly employing unauthorized foreign nationals. Employers are also responsible for properly completing, retaining, and presenting upon request the I-9 for newly hired individuals. The U.S. Immigration and Customs Enforcement ("ICE") agency of the Department of Homeland Security is authorized to conduct investigations to ensure that employers are complying with their I-9 obligations.

An employer can be fined between \$573.00 – \$22,927.00 per violation for knowingly employing an unauthorized foreign national. The amount of the fine depends on whether it is the first, second, third, or subsequent offense. An employer can also be fined between \$237.00 – \$2,360.00 for each I-9 violation. In determining the appropriate civil fine, ICE will consider the size of the employer, the employer's good faith effort at compliance, the seriousness of the violation, whether the individual was an unauthorized foreign national, and the employer's history of previous violations. Individuals who submit false or forged documents or knowingly and falsely complete the I-9 may be fined or imprisoned for up to 5 years.

Documentation for Foreign Nationals

As with all employees, F-1 visa holders (students), J-1 visa holders (exchange visitor students and scholars), H-1B visa holders (temporary specialty employees), Canadian TN visa holders (NAFTA temporary specialty employees), and lawful permanent resident ("green card" holders) must present documentation that verifies both their identity and their eligibility to work in the United States. Foreign nationals are also free to present identity and work eligibility documents from List A or to present identity documents from List B in combination with work eligibility documents from List C. Employers cannot request, suggest, or insist that an individual present certain documents. *See [Handbook for Employers: Guidance for Completing the I-9](#)* to view sample documents.

LIST A - Unexpired Employment Authorization Document issued by DHS that contains a photograph (Form I-688B or I-766)

An Employment Authorization Document, also known as an EAD card, is a work permit. The EAD is issued by the Department of Homeland Security's Citizenship and Immigration Services to certain foreign nationals who are eligible to work in the United States. The cards look like a driver's license card and includes a photo, the person's name, biographical information, EAD alien number, expiration date, and work restrictions (if any).

In Section 2 of the Form I-9, the employer should list the following information under the List A heading:

- **Document title:** Enter "EAD card".

- **Issuing authority:** Enter “Dept of Homeland Security”.
- **Document number:** Enter the EAD alien number on the card.
- **Expiration Date:** Enter the expiration date listed on the front of the card.
- **Document #:** Enter “N/A” for not applicable.
- **Expiration Date:** Draw a line through the spaces.

Please note that the Form I-688B has been replaced with an updated version: Form I-766.

This information is for general use only. It is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

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