

Global Workforce Compliance: Navigating Changes in US I-9 & UK Right to Work Rules

October 18, 2023



Topics to be discussed include:

- Recent changes to the US I-9/employment verification process, including phase-in of the newly designed Form I-9 and implementation of the remote verification option
- An update on the latest UK right to work requirements in the post-Brexit environment
- Technological considerations and cautionary tales in the UK and the US
- Strategies and insights for maintaining compliance, including record-keeping best practices in the UK and US
- Q&A session with our panel

Immigration Reform and Control Act (IRCA) Refresher

- Unlawful to knowingly hired unauthorized individuals (or are continue to employ knowing they are or have become unauthorized to work in the US)
- All US employers must complete Form I-9 for all employees hired after November 6, 1986
- Failure to properly complete, retain, and/or make available for inspection I-9 triggers civil fines
- Employers may not discriminate based on citizenship or national origin with respect to hiring, firing, and recruitment or referral for hire
- Employers may not commit document abuse with intent to discriminate

Penalties

Employment Verification/I-9 Violations

- For unauthorized employment: \$676 - \$27,018 per employee
- For paperwork violations: \$272 - \$2,701 per defective I-9
- Criminal Penalties
 - \$3,000 and/or 6 months imprisonment for engaging pattern or practice
 - Up to 5 years imprisonment where person knowingly uses fraudulent ID documents or makes false I-9 attestations

Immigration Discrimination Violations

- Citizenship/national origin discrimination: \$557 - \$22,324 per violation
- Document abuse: \$223 - \$2,232 per violation

Form I-9 Redesigned

Effective 8/1/2023 – prior versions not valid after 10/31/2023

Employment Eligibility Verification
 Department of Homeland Security
 U.S. Citizenship and Immigration Services

USCIS
 Form I-9
 OMB No 1611-0047
 Expires 08/31/2026

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 Employer's Email Address Employer's Telephone Number

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.

Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.)

- 1. A citizen of the United States
- 2. A noncitizen national of the United States (See instructions.)
- 3. A lawful permanent resident (Enter USCIS or A-Number.)
- 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.

First Day of Employment (mm/dd/yyyy)

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 Edisec 08/01/23 Page 1 of 4

I-9 LIST OF ACCEPTABLE DOCUMENTS

LISTS OF ACCEPTABLE DOCUMENTS		
<p>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).</p>		
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
<ol style="list-style-type: none"> 1. U.S. Passport or U.S. Passport Card 2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551) 3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa 4. Employment Authorization Document that contains a photograph (Form I-766) 5. For an individual temporarily authorized to work for a specific employer because of his or her status or parole: <ol style="list-style-type: none"> a. Foreign passport and b. Form I-94 or Form I-94A that has the following: <ol style="list-style-type: none"> (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. 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 	<p>OR</p>	<ol style="list-style-type: none"> 1. Drivers 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 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 3. School ID card with a photograph 4. Voter's registration card 5. U.S. Military card or draft record 6. Military dependent's ID card 7. U.S. Coast Guard Merchant Mariner card 8. Native American tribal document 9. Driver's license issued by a Canadian government authority <li style="text-align: center;">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
<p>Acceptable Receipts May be presented in lieu of a document listed above for a temporary period. For receipt validity dates, see the M-274.</p>		
<ul style="list-style-type: none"> • 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. 	<p>OR</p>	<ul style="list-style-type: none"> • 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.
<p>* Refer to the Employment Authorization Extensions page on I-9 Central for more information.</p>		

Supplement A – Preparer/Translator Certification for Section 1



**Supplement A,
Preparer and/or Translator Certification for Section 1**

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

**USCIS
Form I-9
Supplement A**
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 must be completed by any preparer and/or translator who assists an employee in completing Section 1 of Form I-9. The preparer and/or translator must enter the employee's name in the spaces provided above. Each preparer or translator must complete, sign, and date a separate certification area. Employers must retain completed supplement sheets with the employee's completed Form I-9.

I attest, under penalty of perjury, that I have assisted in the completion of Section 1 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)	Middle Initial (if any)	
Address (Street Number and Name)	City or Town	State	ZIP Code
		▼	

Supplement B – Reverification and Rehire

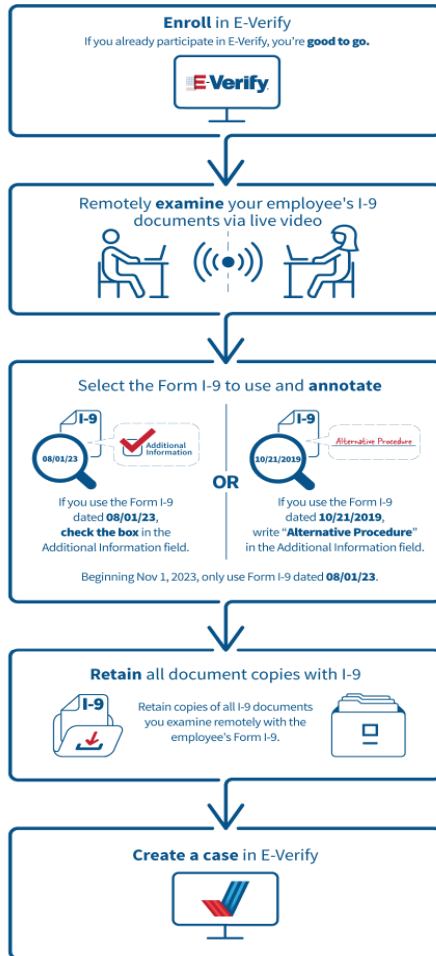
	<p>Supplement B, Reverification and Rehire (formerly Section 3) Department of Homeland Security U.S. Citizenship and Immigration Services</p>	<p>USCIS Form I-9 Supplement B OMB No. 1615-0047 Expires 08/31/2026</p>	
Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle Initial (if any) from Section 1.	
<p>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)</p>			
Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	Last Name (Family Name)	First Name (Given Name)	Middle Initial
<p>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.</p>			
Document Title	Document Number (if any)	Expiration Date (if any) (mm/dd/yyyy)	
<p>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.</p>			
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.

Alternative Procedure for I-9 Remote Verification

- Morphed from special COVID I-9 verification flexibilities
- Option to conduct I-9 verification remotely via live video interaction
- Took effect August 1, 2023
- Employer must be enrolled in E-Verify and in good standing
- Only use for E-Verify enrolled hiring sites
- Must utilize consistently and not discriminately
- Employee may insist on physical verification
- Must retain copies of I-9 identity/employment authorization documents

Alternative Remote Verification Process

How do I participate in the remote examination of Form I-9 documents?



*USCIS, I-9 Central

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.

	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	Additional Information				
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.				

Supplement B, Reverification and Rehire (formerly Section 3)

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.

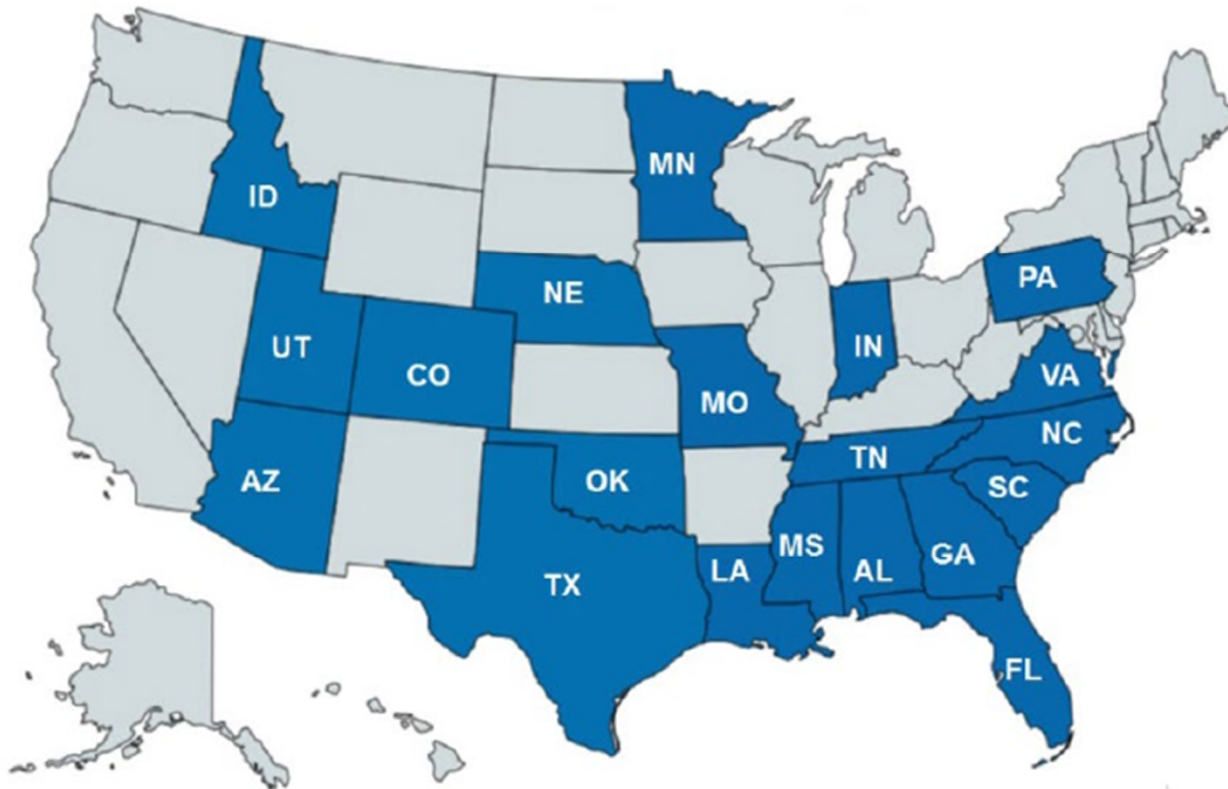
Name of Employer or Authorized Representative	Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)

Additional Information (Initial and date each notation.)

Check here if you used an alternative procedure authorized by DHS to examine documents.

- Internet-based tool verifies employment eligibility of newly hired employees
- Based on information/documentation collected during I-9 process
- Complements, does not replace I-9 verification
- “Voluntary” (except for federal contractors and mandated by some states)
- Over 1 million enrolled employers
- Pilot program subject to continuing Congressional authorization and funding

US States with E-Verify Requirements



Enacted legislation requiring mandatory use of E-Verify that may include most employers, various public entities / contractors

*USCIS E-Verify Overview Webinar

Why Does This Really Matter?

- Global superstore retailer fined \$24 million for I-9 “paperwork” violations
- Computer component producer settles for \$85,000 for alleged immigration discrimination during PERM (green card sponsorship) process
- Social media platform settles with DOJ/IER for \$4.75 million in fines and pays up \$9.5 million to eligible victims

DOJ/IER fines employers for immigration discrimination violations attempting to comply with Export Control laws

- US automaker settles for \$365,000
- DOJ suing private spacecraft manufacturer and exploration company for similar violations

Why do they matter?

- Risk of a civil penalty of up to £20,000 per employee working without permission (increasing to £60,000 in 2024)
- Civil penalties can also lead to the revocation of the employer's sponsor licence
- Criminal offence to employ someone without the right to work if you know or have reasonable cause to believe that is the case. Unlimited fine / custodial sentence of up to 5 years
- The Home Office also has the power to close business premises for 48 hours for repeated illegal working offences

Changes from 2022

- Three types of check going forward:
 - *Manual checks on original documentation* (only where permitted)
 - *Identification Document Validation Technology (IDVT)* (only for British and Irish citizens with valid passports)
 - *Online checks for employees who can provide a share code* (for non-British/Irish citizens only)
- From 6 April 2022, Biometric Resident Permits can no longer be used to provide a statutory excuse
- On or before 31 December 2024, Biometric Resident Permits will be replaced with online status

Enhancements to EU Pre-settled Status

- From September 2023, pre-settled status holders will automatically have their status extended by two years before it expires, on a rolling basis
- The Home Office plans to grant settled status automatically to as many pre-settled status holders as possible who meet the relevant criteria, using available data such as National Insurance records, without the need for a settled status application
- If the Home Office cannot make a decision based on the information available to it, pre-settled status holders will be able to *apply* for settled status or simply retain their pre-settled status (renewed every two years)

Student visa holder restrictions

- Student visa holders limited to 20 hours work during term time
- An employee with a student visa must not work in a role which would fill a full-time permanent vacancy unless certain conditions are met
- Issuing a fixed-term contract is not necessarily the solution. Ask – Was the original vacancy for a permanent role? Will you need to fill the role at the end of the fixed term contract?
- If yes, you can only employ the student visa holder *part-time* in this role unless they have filed an application for:
 - a Skilled Worker visa or
 - a Graduate visa

UK

- **Issues with checking status online:**
 - Conditions of stay not clear – who is the sponsor?
 - Online information may be incomplete e.g. student visa conditions not stated in full
 - Photograph is unclear – employer cannot then carry out identity check
 - Information online conflicts with information on Biometric Residence Permit
 - Employee unable to generate share code
 - 3rd party / IDVT provider should not carry out checks on behalf of employer
- **Issues with manual checks on original documents:**
 - Some manual checks still require you to complete a further check with the Home Office to obtain a statutory excuse
 - Valid immigration status in an expired passport does not provide statutory excuse
 - Checks for fully remote workers

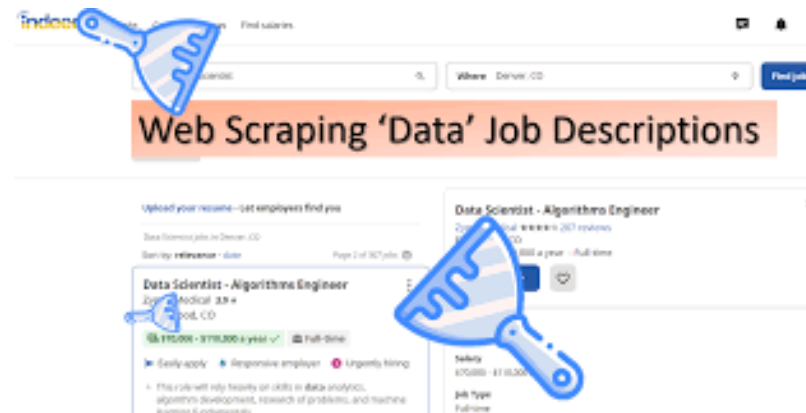
US

Electronic I-9 Systems Requirements

- Reasonable controls for integrity, accuracy, guard against unauthorized/accidental creation of I-9 – audit trail
- Compliant electronic signatures that capture I-9 attestations
- Indexing system that permits identification and retrieval of records
- Easy reproduction of I-9s in printed, paper format
- Must provide DHS access upon inspection
- Data protection concerns

When Technology Goes Awry

CareerBuzz





Strategies & Insights for Maintaining Compliance

- All employee files should include proof of the right to work in line with the Home Office guidance *at the time the individual's employment started*
- Have robust systems for:
 - carrying correct checks before employment begins and follow up checks
 - retaining relevant information; and
 - flagging visa expiry dates for any employee with time limited permission
- Ensure anyone with responsibility for right to work checks has regular in-depth training
- Regularly refer back to relevant Home Office guidance



Strategies & Insights for Maintaining Compliance

- I-9 Retention
 - For all active employee hired after 11/6/1986
 - Once termed must retain for longer of:
 - 1 year after termination; or
 - 3 years after date of hire
- Robust polices
 - I-9 and E-Verify – internal procedures; ownership
 - Integrate with data protection and breach policies
- Conduct regular audits
 - Plan scope and how to communicate with employees
 - Assure not implemented in discriminatory retaliatory manner
 - Remediate I-9s properly – don't make it worse

Questions?



Helpful Resources



- SPB Employment Law Worldview blog
www.employmentlawworldview.com
- Handbook for Employers, M-274
www.uscis.gov/i-9-central/handbook-employers-m-274
- I-9 Central
www.uscis.gov/i-9-central
- E-Verify
www.e-verify.gov
- DOJ Immigrant Rights Section (IER)
www.justice.gov/crt/immigrant-and-employee-rights-section



- Home Office right to work guidance: <https://www.gov.uk/government/publications/right-to-work-checks-employers-guide>
- Right to work checklist: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/774286/Right_to_Work_Checklist.pdf
- Employee with BRP online right to work service: <https://www.gov.uk/prove-right-to-work>
- Employee with electronic visa/status online right to work service - <https://www.gov.uk/view-prove-immigration-status>
- Employer online right to work service: <https://www.gov.uk/view-right-to-work>
- Employer checking service: <https://www.gov.uk/employee-immigration-employment-status>

CLE Information

For those of you who require CLE credits please note the following states are approved or pending CLE for 1.25 general hour in AZ, CA, CT, FL, NJ and NY.

After today's session you will receive a Uniform Certificate of Attendance to complete and email to our colleague Robin Hallagan at robin.hallagan@squirepb.com. Please make sure to add code **Glow1018**.



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