

# 47th Annual Conference on Immigration and Nationality Law

November 3, 2023

Austin

## Are You Work Authorized? Complex Immigration Status Puzzles for Employers



KATHLEEN CAMPBELL WALKER

DICKINSON WRIGHT PLLC EL PASO office

Kwalker@dickinson-wright.com

WWW.DICKINSONWRIGHT.COM

LEIGH N. GANCHAN

OGLETREE DEAKINS – HOUSTON office

Leigh.ganchan@ogletree.com

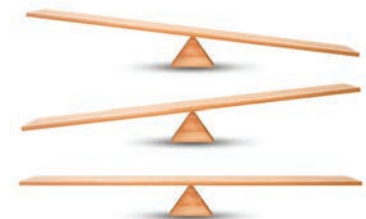
WWW.OGLETREE.COM

1

1

## Challenges to Compliance – Work Authorization/Discrimination

- 8 U.S.C. §1324a [INA§274a] - completion of the Form I-9 and how the employment of unauthorized foreign nationals is unlawful
- 8 U.S.C. §1324b [INA§274b] - prohibition of employment related discrimination based on national origin and citizenship



2

2

# Form I-9 – Section 1



**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	

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.

3

# Form I-9 – Section 2

**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 1	List A	OR	List B	AND	List C
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.

4

# The LOAD – List of Acceptable Documents (1)

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
<ol style="list-style-type: none"> <li>U.S. Passport or U.S. Passport Card</li> <li>Permanent Resident Card or Alien Registration Receipt Card (Form I-551)</li> <li>Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa</li> <li>Employment Authorization Document that contains a photograph (Form I-766)</li> <li>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"> <li>Foreign passport; and</li> <li>Form I-94 or Form I-94A that has the following:                                     <ol style="list-style-type: none"> <li>The same name as the passport; and</li> <li>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.</li> </ol> </li> </ol> </li> <li>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</li> </ol>		<ol style="list-style-type: none"> <li>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</li> <li>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</li> <li>School ID card with a photograph</li> <li>Voter's registration card</li> <li>U.S. Military card or draft record</li> <li>Military dependent's ID card</li> <li>U.S. Coast Guard Merchant Mariner Card</li> <li>Native American tribal document</li> <li>Driver's license issued by a Canadian government authority</li> </ol> <p><b>For persons under age 18 who are unable to present a document listed above:</b></p> <ol style="list-style-type: none"> <li>School record or report card</li> <li>Clinic, doctor, or hospital record</li> <li>Day-care or nursery school record</li> </ol>		<ol style="list-style-type: none"> <li>A Social Security Account Number card, unless the card includes one of the following restrictions:                             <ol style="list-style-type: none"> <li>NOT VALID FOR EMPLOYMENT</li> <li>VALID FOR WORK ONLY WITH INS AUTHORIZATION</li> <li>VALID FOR WORK ONLY WITH DHS AUTHORIZATION</li> </ol> </li> <li>Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)</li> <li>Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal</li> <li>Native American tribal document</li> <li>U.S. Citizen ID Card (Form I-197)</li> <li>Identification Card for Use of Resident Citizen in the United States (Form I-179)</li> <li>Employment authorization document issued by the Department of Homeland Security</li> </ol> <p>For examples, see <a href="#">Section 7</a> and <a href="#">Section 13</a> of the M-274 on <a href="https://uscis.gov/i-9-central">uscis.gov/i-9-central</a>. The Form I-766, Employment Authorization Document, is a List A, <b>Item Number 4</b>, document, not a List C document.</p>

# The LOAD – List of Acceptable Documents (2 - receipts)

Acceptable Receipts				
<p>May be presented in lieu of a document listed above for a temporary period.</p> <p>For receipt validity dates, see the M-274.</p>				
<ul style="list-style-type: none"> <li>Receipt for a replacement of a lost, stolen, or damaged List A document.</li> <li>Form I-94 issued to a lawful permanent resident that contains an I-551 stamp and a photograph of the individual.</li> <li>Form I-94 with "RE" notation or refugee stamp issued to a refugee.</li> </ul>	OR	<ul style="list-style-type: none"> <li>Receipt for a replacement of a lost, stolen, or damaged List B document.</li> </ul>	OR	<ul style="list-style-type: none"> <li>Receipt for a replacement of a lost, stolen, or damaged List C document.</li> </ul>

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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

## Title search: Are You Work Authorized? Complex Immigration Status Puzzles for Employers

Also available as part of the eCourse

[2023 eConference on Immigration and Nationality Law](#)

First appeared as part of the conference materials for the  
47<sup>th</sup> Annual Conference on Immigration and Nationality Law session  
"Are You Work Authorized? Complex Immigration Status Puzzles for Employers"