



What is the Employment Eligibility Verification Process?

Employers are required to verify the identity and employment eligibility of all newly hired employees.¹ To comply with this requirement, employers may require employees to provide certain documentations to complete an I-9 Employment Eligibility Verification Form and, in certain circumstances, may enter an employee's information into an electronic system called E-Verify. This requirement applies to all employers, regardless of size, and must be conducted for all new hires - not just those the employer believes are non-citizens or undocumented. You should be aware that there are strict rules about how and when employers may conduct the I-9 and/or E-Verify processes summarized below. Failure to comply with such rules could constitute discrimination and/or "document abuse" and could violate federal law. If you believe you have been subjected to discriminatory application of these processes, let us know by contacting us at legal@rocunited.org

What is the I-9 Process?

Employers comply with the employment eligibility verification process by completing the I-9 Employment Eligibility Verification Form. To enable employers to complete the I-9 form, workers are required to present documents proving their identity and employment eligibility.

You can choose from a list which documents to produce from those listed on the reverse side of the I-9 form² to present to your employer to prove your identity and employment eligibility. An employer may not require you to present specific documents from among those listed.

It is important to know, that federal law prohibits employers from administering the I-9 process in a discriminatory manner, from engaging in unfair practices related to requesting and reviewing workers' documents and from retaliating against workers who assert their rights with respect to the I-9 process.

When do I have to do it?

An employer generally has three business days after you are hired to complete the I-9 process. An employer is not allowed to require you to complete the I-9 form prior to being hired for a position. Such "pre-screening" is considered "document abuse" and violates

¹The definition of "employee" exempts certain persons from the I-9 requirement, for example, independent contractors, casual domestic workers, etc. For more information, see 8 C.F.R. § 274a.1

² Employees with "unique or temporary work authorization" may present a document that otherwise may not be acceptable. For example, persons with temporary protected status (TPS) whose work authorization has been automatically extended via a notice in the Federal Register may present an employment authorization document that appears to be expired.



federal law. In general, unless an employer has a legitimate basis for questioning your eligibility to work in the U.S., the employer should not require you to “re-verify” your authorization to work and, if there is a basis, the employer must apply the “re-verification” process in a non-discriminatory way. Many employers use “re-verification” to retaliate against workers who complain about working conditions. If you believe this has happened to you, contact legal@rocunited.org

What is E-Verify and how do I know if my employer uses it?

E-Verify is a system that allows employers to electronically verify U.S. citizen and noncitizen employees’ employment eligibility with the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA). While it is voluntary for most employers, it is mandatory for some federal contractors and in certain states for certain employees. An employer participating in E-Verify is required to post a notice provided by DHS clearly visible to applicants and new employees. An employer participating in E-Verify may not enter your information into the E-Verify system until after you have been offered a job and have completed the I-9 form.

What if E-Verify doesn’t confirm my information?

You have the right to know if E-Verify cannot confirm your information, the right to receive and review a “Notice to Employee of Tentative Non-confirmation” in English or Spanish, the right to receive a “Referral Notice” to SSA or DHS, and the right to challenge the finding. You have eight federal working days after receipt of the “Notice to Employee of Tentative Non-confirmation” in which to challenge an E-Verify finding with DHS or SSA. This does not mean that you have to resolve the non-confirmation within that time, but that you initiate contact with DHS or SSA within eight federal working days.

You have the right not to be terminated, or for any adverse employment action to be taken against you (for example, pay cut, demotion, suspension, etc.), while you challenge an E-Verify finding, regardless of how long it takes the government to resolve the error.

What happens if Immigration does an I-9 audit at my work?

If you have specific questions or concerns about an I-9 audit at your workplace, you should contact an attorney or workers’ rights organization, like ROC. Some general rules are:

- During an I-9 audit you have the right to choose not to speak about your immigration status with their employer.



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- You should always try to have another worker present when meeting with management or human resources regarding I-9 audit issues.
 - If you are told there are problems with their work authorization, ask what the basis of the discrepancy is, request the information in writing and request a copy of the notice from the government on which the company is basing its investigation.
 - Keep an eye out for discriminatory patterns. Is the audit being conducted on all workers? Is the employer singling out only some workers? Is ICE singling out only some workers? Is everyone given the same amount of time to correct their records?
 - You have the right to remain silent and not admit or sign anything when encountering ICE. You also have the right to speak to an attorney before providing any information or signing any documents.

Can my employer force me to resubmit my documents?

Generally, your employer should not resubmit your information to E-Verify after the initial verification process at hire (for example, to retaliate against you if you file a wage-and-hour claim against the employer). However, in some circumstances your employer may be allowed to reverify your employment eligibility if they receive a contract or subcontract from the federal government, if the work authorization document you originally presented had an expiration date, or if your employer is being audited by ICE and are told that their I-9 forms contain mistakes or other problems. It is still your choice to choose which documents to present. If you provided a green card, your employer should not ask you for your documents again.

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