

# Retaining Form I-9

Employers do not need to complete or retain a Form I-9 for the following circumstances:

- Employees hired on or before Nov. 6, 1986, and are still employed and have a reasonable expectation of employment at all times
- Employees hired for employment in the Commonwealth of Northern Mariana Islands on or before Nov. 27, 2009, and are still employed and have a reasonable expectation of employment at all times
- Independent contractors and individuals providing services who are employed by a contractor providing contract services (i.e., employee leasing or temporary agencies)
- Individuals not physically working in the United States
- Self-employed individuals performing work on their behalf and not for a business entity
- Unremunerated interns
- Individuals employed for casual domestic work—such as a handyman, babysitter or cleaning person—in a private home on a sporadic, irregular or intermittent basis
- Employees referred by a state employment agency, as long as the agency provides the employer with a certificate

This list is not exhaustive, and specific state or local laws may impact these requirements. Employers should consider consulting with legal counsel to ensure compliance with all laws and requirements.

## Record Retention

Once an individual's employment has terminated, the employer must keep the former employee's completed Form I-9 on file until at least three years after the date of hire or one year after the date employment is terminated, whichever is later.

Once the date for retaining an employee's Form I-9 has passed, employers may destroy the form and any photocopies of the employee's identity and employability documents. Shredding is an acceptable way of destroying these documents. Purging a former employee's Form I-9 too early, however, is treated as if the employee's form is missing.

## Filing

Employers do not need to file completed Forms I-9 with any federal agency. Employers can store completed Forms I-9 and any copies of documents in a manner that fits their business needs—keeping in mind that the form requires the collection of personally identifiable information (PII)—and facilitates the requirement to make Forms I-9 available for inspection. Employers may store hard copies in alphabetic order in a folder—or electronic folder—specifically marked for Forms I-9. The United States Citizenship and Immigration Services (USCIS) recommends employers keep these files separate from employee personnel files. If an authorized officer from the Department of Homeland Security or employees of the Department of Labor or the Immigrant and Employee Rights Section of the Department of Justice requests copies of the forms for any reason, employers must have original forms available on location within three days of the request.

Federal law permits employers to retain Forms I-9 on paper, microfilm, microfiche or electronically. Employers may also store Forms I-9 onsite or at an offsite storage facility and in a single format or a combination of formats.

If employers choose to keep paper copies of employee identification and eligibility documents with the employee's original, signed Form I-9, the USCIS recommends employers keep completed Forms I-9 separate from personnel records to facilitate an inspection request and to protect employee PII.

If employers choose to retain copies of completed Forms I-9 electronically, the electronic-storage system must:

- Include controls to ensure the integrity, accuracy and reliability
- Include controls to detect and prevent the unauthorized or accidental creation, alteration or deletion of a completed Form I-9, including electronic signatures, if any
- Include controls to ensure an audit trail so any change or alteration to the form since its creation is electronically stored and can be accessed by a government officer during an inspection

- Include an inspection and quality assurance program that regularly evaluates the electronic-storage system, including electronic signatures, if any
- Include an index so any particular record can be accessed immediately
- Produce legible and readable records when displayed on a video-display terminal or reproduced