

Farm Employers and Form I-9 Compliance

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If you are a farm employer, you are required to complete and retain copies of Form I-9, an employment authorization confirmation, for all employees. This includes all agricultural operations, regardless of size, type, or organizational structure. The following questions provide an overview of the I-9 form along with tips to ensure employer compliance.

Who? Any employer, including agricultural operations, should have an I-9 on file for all employees. There is no exception for small operations or family operations; *any* employee of *any* operation should complete an I-9 form. On the other hand, independent contractors are not required to complete the I-9 form. Generally, an employer exerts great control over an employee; whereas, an independent contractor provides his or her own tools, often works on only a specific project, and is not directly supervised by the business owner. Consult your attorney if you need advice on whether someone qualifies as an employee or as an independent contractor.

What? The purpose of the I-9 form is to verify the identity and employment authorization status of employees. The document requires the employee to present information and the employer to verify



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that information, proving the employee's identity and authorization to work in the United States.

When? Complete the I-9 form after making an offer of employment and within at least three business days of hiring. Usually, these forms are completed on the employee's first day of work.

Where? A current I-9 form is available from the US Citizenship and Immigration Services website at <http://www.uscis.gov/sites/default/files/files/form/i-9.pdf>. Download a new copy each time you hire a new employee to ensure you always use



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the most current version. Keep a copy of the I-9 form for each employee for 3 years after the date the employee is hired or 1 year after the employee leaves, whichever is longer.

Why? Hiring an unauthorized person can result in serious consequences. One of the simplest and best defenses to this claim is to show I-9 compliance. Under federal law, “knowingly hiring” an unauthorized alien results in criminal and civil penalties. For the first offense, civil penalties range from \$275 to \$2,200 per violation. If the government finds a pattern of practice or violations by an employer, criminal fines can be levied of up to \$16,000 per violation and/or up to 6 months imprisonment. Having proper I-9 compliance and document retention is excellent evidence on the employer’s behalf that he or she did not “knowingly” hire an unauthorized alien.

How? The I-9 form is made up of three sections. The employee completes Section 1 and the employer completes Section 2. Section 3 is necessary only when dealing with re-verification or re-hires.

Section 1 asks the employee for basic information such as name, address, and work authorization status.

Section 2 asks the employer to examine the documents provided by the employee to ensure that they *reasonably appear* to be genuine and related to the employee. It is understood that employers are not documentation experts and are only held to a reasonable, good faith standard. For example, if a man who is 5 feet 3 inches tall, 150 pounds, with brown hair presents a drivers’ license for someone who is 6 feet tall, 240 pounds, and blonde, a reasonable person would be expected to know this document is not related to the employee.

As noted, the employee must present certain documentation to the employer to prove both his or her identity and authorization to work in the United States.

There are three categories of documents (labeled A, B, and C) that the employee may choose from in order to satisfy the I-9 requirements. The employee may select which documents he or she wishes to present; it is illegal for an employer to require any particular document from an employee or to require multiple documents in any given category. A full list of permitted documents is included on the I-9 form.

- **Category A** documents prove both the employee’s identity and work authorization. If an employee provides a Category A document, he or she need not provide any Category B or C documents. Category A documents include, but are not limited to a US passport, permanent resident card, alien registration receipt card, or employment authorization document containing a photograph.
- **Category B** documents establish the employee’s identity, but not work authorization. In light of this, employees providing a Category B document must also provide a Category C document. Category B documents include, but are not limited to a driver’s license, government-

issued identification card, voter's registration card, US military card, or school ID card with photograph.

- **Category C** documents establish work authorization, but do not verify the employee's identity. An employee presenting a Category C document must also provide a Category B document. Category C documents include, but are not limited to a Social Security account number card, certification of birth abroad issued by the Department of State, original or certified copy of a birth certificate, or employment authorization document from the Department of Homeland Security.

If the employee provides documentation that does not reasonably appear to be genuine or to relate to the employee, the employer should reject the documents and request other documents to satisfy Form I-9. The employer may not request

certain documents (such as a passport); it is the employee who may choose which documents he or she will provide so long as they satisfy the I-9 requirements. If the employee fails to provide the required I-9 documents, which appear to be genuine and related to the employee, the employer should terminate his or her employment.



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More Information

The Handbook for Employers: Instructions for Completing Form I-9, prepared by USCIS is available online at <http://www.uscis.gov/sites/default/files/files/form/m-274.pdf>.

A webinar that explains the I-9 verification process is available at <https://vimeo.com/131480716>.

Department of Homeland Security "Form I-9 Instructions" is available at <http://www.jobs.irs.gov/downloads/scheduler/I-9EmploymentEligibilityVerification.pdf>.

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