Part Three
Photocopying and Retaining Form I-9

Employers must retain an employee's completed Form I-9 for as long as the individual works for the employer. Once the individual's employment has terminated, the employer must determine how long after termination the Form I-9 must be retained, which is either three years after the date of hire, or one year after the date employment is terminated, whichever is later. Forms I-9 can be retained either on paper or microform, or electronically.

To store Forms I-9 electronically, you may use any electronic recordkeeping, attestation, and retention system that complies with DHS standards, including most commercially available off-the-shelf computer programs and commercial automated data processing systems. However, the system must not be subject to any agreement that would restrict access to and use of it by an agency of the United States. (See Electronic Retention of Forms I-9 on the next page for additional requirements.)

1. Enter date employee started work: ______________________
   Add 3 years to Line 1
   A. __________

2. Termination date: ______________________
   Add 1 year to Line 2
   B. __________

Which date is later: A or B? Enter later date here.
   C. __________
   Store Form I-9 until this date.

Figure 8: Form I-9 Retention Calculator

Paper Retention of Forms I-9
Forms I-9 can be signed and stored in paper format with original handwritten signatures. Simply photocopy or print a blank Form I-9. Ensure that the employee receives the instructions for completing the form. When copying or printing the paper Form I-9, you may photocopy the two-sided form by making either double-sided or single-sided copies.

Only the pages of the Form I-9 on which you or the employee enter data must be retained. You may retain completed paper forms on-site or at an off-site storage facility for the required retention period, as long as you are able to present the Forms I-9 within three days of an inspection request from DHS, OSC, or U.S. Department of Labor (DOL) officers.

Microform Retention of Forms I-9
You may retain copies of original signed Forms I-9 on microfilm or microfiche. Only the pages of the Form I-9 on which you or the employee enter data must be retained. To do so, you should:

1. Select film stock that will preserve the image and allow its access and use for the entire retention period, which could be upward of 20 years, depending on the employee and your business.

2. Use well-maintained equipment to create and view microfilms and microfiche that provides clear viewing, and can reproduce legible paper copies. DHS officers must have access to clear, readable documents should they need to inspect your forms.
3. Place indexes either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

**Electronic Retention of Forms I-9**

USCIS provides a Portable Document Format (.pdf) fillable-printable Form I-9 from its website, www.uscis.gov. In addition, you may generate and retain Form I-9 electronically as long as the employee receives instructions for completing the form and:

1. The resulting form is legible;
2. No change is made to the name, content, or sequence of the data elements and instructions;
3. No additional data elements or language are inserted; and
4. The standards specified in the regulations are met.
   (8 CFR Part 274a.2(e, (f), (g), (h) and (i) as applicable.)

Employers may use paper, electronic systems, or a combination of paper and electronic systems. You may complete or retain Form I-9 in an electronic generation or storage system that includes:

1. Reasonable controls to ensure the integrity, accuracy and reliability of the electronic generation or storage system;
2. Reasonable controls designed to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of an electronically completed or stored Form I-9, including the electronic signature, if used;
3. An inspection and quality assurance program that regularly evaluates the electronic generation or storage system, and includes periodic checks of electronically stored Forms I-9, including the electronic signature, if used;
4. An indexing system that permits the identification and retrieval for viewing or reproducing of relevant documents and records maintained in an electronic storage system; and
5. The ability to reproduce legible and readable paper copies.

If you choose to complete or retain Forms I-9 electronically, you may use one or more electronic generation or storage systems, as long as Forms I-9 retained in the system remain fully accessible and meet the regulations. You may change electronic storage systems as long as the systems meet the performance requirements of the regulations. For each electronic generation or storage system used, you must maintain and make available upon request complete descriptions of:

1. The electronic generation and storage system, including all procedures relating to its use.
2. The indexing system that permits the identification and retrieval of relevant documents and records maintained in an electronic storage system. You are not required to maintain separate indexing databases for each system if comparable results can be achieved without separate indexing databases.

Only the pages of the Form I-9 on which you or the employee enter data must be retained.

**NOTE:** Forms I-9 must be stored for three years after the date you hire an employee, or one year after the employee's employment ends, whichever is later, which can result in a long retention period. For example, if an employee retires from your company after 15 years, you will need to store his or her Form I-9 for a total of 15 years.

**Documentation of Electronic Storage Systems**

If you choose to complete or retain Forms I-9 electronically, you must maintain and make available upon request documentation of the business processes that:

1. Create the retained Forms I-9,
2. Modify and maintain the retained Forms I-9, and
3. Establish the authenticity and integrity of the forms, such as audit trails.

**NOTE:** Insufficient or incomplete documentation is a violation of section 274A(a)(1)(B) of the INA (8 CFR Part 274a.2(f)(3)).

**Electronic Signature of Forms I-9**

You may choose to fill out a paper Form I-9 and scan and upload the original signed form to retain it electronically. Once you have securely stored Form I-9 in electronic format, you may destroy the original paper Form I-9.
If you complete Forms I-9 electronically using an electronic signature, your system for capturing electronic signatures must allow signatories to acknowledge that they read the attestation and attach the electronic signature to an electronically completed Form I-9. The system must also:

1. Affix the electronic signature at the time of the transaction;
2. Create and preserve a record verifying the identity of the person producing the signature; and
3. Upon request of the employee, provide a printed confirmation of the transaction to the person providing the signature.

Employers who complete Forms I-9 electronically must attest to the required information in Section 2 of Form I-9. The system used to capture the electronic signature should include a method to acknowledge that the attestation to be signed has been read by the signatory.

NOTE: If you choose to use an electronic signature to complete Form I-9, but do not comply with these standards, DHS will determine that you have not properly completed Form I-9, in violation of section 274A(a)(1)(B) of the INA (8 CFR Part 274a.2(b)(2)).

Security

If you retain Forms I-9 electronically, you must implement an effective records security program that:

1. Ensures that only authorized personnel have access to electronic records;
2. Provides for backup and recovery of records to protect against information loss;
3. Ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of electronic records; and
4. Ensures that whenever an individual creates, completes, updates, modifies, alters, or corrects an electronic record, the system creates a secure and permanent record that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

NOTE: If an employer’s action or inaction results in the alteration, loss, or erasure of electronic records, and the employer knew, or reasonably should have known, that the action or inaction could have that effect, the employer is in violation of section 274A(b)(3) of the INA (8 CFR Part 274a.2(g)(2)).

Retaining Copies of Form I-9 Documentation

You may choose to copy or scan documents an employee presents when completing Form I-9, which you may, but are not required to, retain with his or her Form I-9. Even if you retain copies of documentation, you are still required to fully complete Section 2 of Form I-9. If you choose to retain copies of an employee’s documents, you must do so for all employees, regardless of national origin or citizenship status, or you may be in violation of anti-discrimination laws.

Copies or electronic images of presented documents must be retrievable consistent with DHS’s standards on electronic retention, documentation, security, and electronic signatures for employers and employees, as specified in 8 CFR Part 274a.2(b)(3).

If copies or electronic images of the employee’s documents are made, they must either be retained with Form I-9 or stored with the employee’s records.

Inspection

The Immigration and Nationality Act (INA) specifically authorizes DHS, OSC, and DOL to inspect Forms I-9. DHS, OSC, and DOL provide employers a minimum of three days' notice prior to inspecting retained Forms I-9. The employer must make Forms I-9 available upon request at the location where DHS, OSC, or DOL requests to see them.

If you store Forms I-9 at an off-site location, inform the inspecting officer of the location where you store them and make arrangements for the inspection. The inspecting officers may perform an inspection at an office of an authorized agency of the United States if previous arrangements are made. Recruiters or referrers for a fee who designate an employer to complete employment verification procedures may present photocopies or printed electronic images of Forms I-9 at an inspection. If you refuse or delay an inspection, you will be in violation of DHS retention requirements.

At the time of an inspection, you must:

1. Retrieve and reproduce only the Forms I-9 electronically retained in the electronic storage system and supporting documentation specifically requested by the inspecting officer. Supporting documentation includes associated audit trails that show the actions
performed within or on the system during a given period of time.

2. Provide the inspecting officer with appropriate hardware and software, personnel, and documentation necessary to locate, retrieve, read, and reproduce any electronically stored Forms I-9, any supporting documents, and their associated audit trails, reports, and other data used to maintain the authenticity, integrity, and reliability of the records.

3. Provide the inspecting officer, if requested, any reasonably available or obtainable electronic summary file(s), such as spreadsheets, containing all of the information fields on all of the electronically stored Forms I-9.

**NOTE**: E-Verify employers should provide E-Verify case summaries in addition to Forms I-9 when they receive a request for inspection.