

## Who Should Eye Your I-9s?



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Monday, July 17, 2017

Our readers should be well aware that every newly-hired employee in the United States must complete a Form I-9 and present supporting documentation confirming their ability to legally work in the job they are being hired into.

A Form I-9 has three sections:

- Section 1 must be completed and signed by the employee after they have accepted an offer but no later than their first day of employment.
- Section 3 is only completed after a break in service or if prior work authorization has expired.
- Section 2 (the focus of this article) is completed by the employer or an authorized representative. The instructions to Section 2 state “[e]mployers or their authorized representative must complete and sign Section 2 within 3 business days of the employee’s first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the “Lists of Acceptable Documents.”

Observing and verifying an employee’s supporting documentation is relatively easy for employers who have trained human resource managers or other officials at the hiring location. However, in our 21<sup>st</sup> century work environment, employers who have small and geographically remote operations with no trained management on site or

who hire employees who will only work from home face challenges in complying with Section 2 requirements. This raises the question “Can an HR manager at headquarters complete Section 2 when they do not physically observe the original documents presented by the employee?” Unfortunately, the answer is “No.”

According to explicit guidance provided by Guidance for Completing Form I-9 Handbook for Employers published by the U.S. Citizenship and Immigration Services (USCIS), the prospective employee must be physically present with the document examiner when producing his/her original employment-authorizing documentation. Fortunately, an employer may designate or contract with a “personnel officer, foreman, agent or anyone else acting on [employer’s] behalf, including a notary public, to complete Section 2.” USCIS, however, has made it clear that such a designee must then execute Section 2 on the employer’s behalf. In USCIS’s words, “[i]t is not acceptable for the designated person to physically examine the employee’s employment authorization and identity documents, and leave Section 2 for the centrally-based human resources officer to complete.”

If an employer designates a third party to complete Section 2 at an off-site location, the employer is liable for any I-9-related violations committed by the designee. This leaves employers with remote facilities with a few options:

- Ensure that someone at each location is properly trained in all the nuances of I-9 completion and verification.
- Bring newly hired employees to a central office for onboarding, including completion of the I-9.
- Have a local person scan or fax the I-9 and supporting documentation to a central office for review and approval by trained personnel. Then, the trained reviewer gives approval to the on-site person who has personally observed the original documents to sign the verification.

Making false certifications in Form I-9 could lead to criminal prosecution. This is one area where employers need to get it right the first time.

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