

I-9 Recordkeeping Requirements FAQ **By Greg Siskind (gsiskind@visalaw.com)**

1. What are the Form I-9 recordkeeping requirements?

Employers must keep I-9 Forms for all current employees though the forms of certain terminated employees can be destroyed. In the case of an audit from a government agency, the forms must be produced for inspection. The forms may be retained in either paper or electronic format as well as in microfilm or microfiche format (see discussion below for more information on this subject).

2. When can Form I-9 be destroyed?

For terminated employees (the date employment in the US ceased for employees transferred abroad), the form must be retained for at least three years from the date of hire or for at least one year after the termination date, whichever comes later.

Employers should figure out two dates when an employee is terminated. The first is the date three years from the date of the employee's date of hire. The second is the date one year from the termination date. The later date is the date until which the Form I-9 must be retained.

Note that there is a different rule for recruiters or referrers for a fee. Those entities only are required to maintain the Forms I-9 for a three year period from the date of hire regardless of whether the employee has been terminated or not.

In addition to establishing a reminder system to re-verify Forms I-9, employers should also establish a "tickler" system to destroy forms no longer required to be retained.

3. Should recordkeeping be centralized at a company?

Keeping records in one location is generally advisable because it makes it easier to conduct internal audits to ensure the employer is complying with IRCA's rules and also to more easily prepare for a government inspection since having the forms at one location will allow more time for review.

The forms themselves can be kept onsite or at an offsite storage facility as long as the employer is able to produce the documentation within three days of an audit request from a federal agency.

4. Does an employer need to keep copies of the documents presented by the employee?

No. Retaining copies of the supporting documents is voluntary. Employers can retain copies of documents and must keep the copies with the specific Form I-9. While some would argue that maintaining copies of documents leaves an unnecessary paper trail for government inspectors, it is also true that maintaining documentation could provide a good faith defense for an employer in showing that it had reason to believe a worker was authorized even if the paperwork was not properly completed. IRCA compliance officers may also be suspicious of employers that don't keep copies of documents. It is also easier for an employer to conduct internal audits to ensure compliance when they can see what documents were actually provided to the human resource representative responsible for completion of the Form I-9. Whatever a company decides, however, it is important that the policy be consistently applied and it is important to remember that simply having copies of the documents does not relieve the employer of responsibility for fully completing Section 2 of the Form I-9. Also, consistency is important. Keep all the documents or keep none of them since keeping copies only for certain employees could open the employer up to charges of discrimination.

5. Can Form I-9 be completed on paper be stored in another format?

Yes. In addition to paper, Forms I-9 may be retained in an electronic, microfilm or microfiche format.

DHS suggests the following with respect to microfilm or microfiche:

1. use film stock that will last the entire retention period (which could be 20+ years for some businesses)
2. use equipment that allows for a high degree of readability and can be copied on to paper
3. for microfilms, place the index at the beginning or end of the series and for microfiche, place the indexes on the last microfiche.

Forms I-9 can also be retained in an electronic format provided the system meets the following standards:

1. there are reasonable controls to ensure the integrity of the electronic storage system

2. controls are in place to prevent the unauthorized creation of, deletion of or alteration of the stored Form I-9
3. there are regular inspections of the electronic data to ensure the integrity of the data
4. there is a retrieval system that includes an indexing system allowing for searches on any field.
5. there is the ability to produce readable hardcopies.

6. Should the Form I-9 records be kept with the personnel records?

This is generally a bad idea. First, it could compromise the privacy of employees by allowing government inspectors to review items that are completely unrelated to the Form I-9. Employers that want to prevent this would have to manually go through the personnel records and pull the Form I-9 paperwork, something that could cost valuable time as the employer prepares for the government inspection. Keeping the Forms I-9 separate will also make it easier to conduct internal audits to ensure compliance with IRCA and to re-verify forms as needed.