



December 21, 2024

Immigration and Form I-9

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Immigration and Form I-9

Reference Number: CTAS-1078

Federal Law.

Under the federal Immigration Reform and Control Act of 1986, employers are required to have all employees who were hired after November 6, 1986, to complete an Employment Eligibility Verification Form (Form I-9) when they begin employment. Failure to comply with the requirements of the Immigration Reform and Control Act of 1986 can lead to civil penalties for knowingly hiring unauthorized employees or for failing to comply with recordkeeping requirements.

The Form I-9 is not filed with any agency, but instead it is to be retained within the county in the employee's personnel file. In order to comply with this law, employers must do the following:

1. Have each new employee fill out Section 1 of Form I-9 as soon as they start to work.
2. Check documents establishing the employee's identity and eligibility to work.
3. Properly complete Section 2 of Form I-9.
4. Retain the form for three years after the date of hire, or one year after employment ends, whichever is later.
5. Present the form for inspection if requested by the U. S. Immigration and Naturalization Service (INS), the U. S. Department of Labor (DOL), or the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Employers must not discriminate on the basis of national origin or citizenship. An employer is prohibited from requesting anyone to present more or different documentation than what is required. All employees must complete the form regardless of national origin or citizenship status.

Note that in 2003 the services formerly provided by INS were transferred to the U. S. Citizenship and Immigration Services (USCIS), a division of the Department of Homeland Security. The USCIS administers immigration services formerly handled by the Immigration and Naturalization Service (INS), including the I-9 form. Information to assist employers with issues concerning the employment of non-U.S. citizens can be obtained from USCIS.

USCIS Web site

The USCIS has a toll-free information number: 1 (800) 375-5283.

The field office serving Tennessee is located in Memphis:

U. S. Citizenship and Immigration Services

Memphis Field Office

80 Monroe Avenue, 7th Floor

Memphis, Tennessee 38103

State Law.

State law prohibits an employer from knowingly employing, rehiring, recruiting, or employing persons who are unlawfully in the United States. T.C.A. § 50-1-103. An employer will not be in violation of this prohibition if the employer obtained and documented, after commencement of employment, lawful resident verification information (I-9), or if the employer verified the work authorization status of the employee using E-Verify.

The Tennessee Unlawful Employment Act, T.C.A. § 50-1-701 et seq., imposes two additional requirements on Tennessee employers that are different from the federal Form I-9 requirements: (1) employers must document employment eligibility for non-employees (defined as any individual, other than an employee, paid directly by the employer in exchange for the individual's labor or services) as well as employees; and (2) employers must retain copies of the documentation.[1]For non-employees, employers must obtain and maintain a copy of any one of the following documents: (1) valid Tennessee driver license or photo ID issued by department of safety, (2) valid driver license or photo ID issued by another state that has been determined by the department of labor and workforce development to have issuance requirements at least as strict as those in Tennessee, (3) official birth certificate issued by a U.S. state, jurisdiction, or territory, or the U.S. government, (4) valid, unexpired U.S. passport, (5) U.S. certificate of birth abroad, (6) report of birth abroad of a U.S. citizen, (7) certificate of citizenship, (8) certificate of naturalization, (9) U.S. citizen identification card, or (10) valid alien registration documentation or other proof of current immigration registration recognized by the U. S. department of homeland security containing the person's complete legal name and current alien admission number or alien file number(s). T.C.A. § 50-1-703. For employees, employers must either (1) obtain and maintain one of the foregoing documents, or (2) enroll

in and use the E-Verify system to verify the employment status, and maintain a record of the results generated by E-Verify. Verifying employment with E-Verify is a defense to a charge of hiring undocumented immigrants, but obtaining one of the listed documents, if this is the only evidence the employer has, is not a defense to such a charge. The employer must maintain records generated by E-Verify or the alternate documentation for 3 years after the date of employee's hire or 1 year after termination, whichever is later. T.C.A. § 50-1-703.

If an employer does not have internet access or less than thirty-five (35) full-time employees, the department of labor and workforce development's office of employment verification assistance is required to enroll at the employer in the E-Verify program or conduct work authorization status checks of the employer's employees by using the E-Verify program, at no charge, as long as the employer signs a prescribed form, under the penalty of perjury, that the employer is qualified for assistance and completes paperwork required by the E-Verify program to permit the office to provide the assistance. T.C.A. § 50-1-703.

State citizens and employees of federal agencies are authorized to file complaints with the department of labor and workforce development alleging violation of this law. Civil penalties are as follows: \$500 for first violation, plus \$500 for each employee or non-employee not verified; \$1,000 for second violation, plus \$1,000 for each employee or non-employee not verified; \$2,500 for third or subsequent violation, plus \$2,500 for each employee or non-employee not verified. The commissioner is authorized to issue a warning in lieu of penalties for a first violation if the employer complies with all remedial action ordered and the commissioner finds that the failure to obtain proper documentation was not a knowing violation. Money collected goes to the lawful employment enforcement fund for enforcement and education efforts. T.C.A. § 50-1-703. Names and information of violators will be posted on the department's website. T.C.A. § 50-1-705. If an employer does not terminate an employee for whom the employer received a final non-confirmation result from E-Verify, the commissioner may consider this fact in determining whether to impose civil penalties. T.C.A. § 50-1-709.

There is no cause of action for wrongful or retaliatory discharge against an employer if (1) the employee is not authorized to work in the United States; and (2) the employer was not aware that the employee was not authorized to work in the United States under federal immigration laws. T.C.A. § 50-1-802.

If an employer discovers that an employee is not authorized to work in the United States through results produced by the E-Verify program, as defined in § 50-1-702, and discharges the employee based on those positive results, then the employer does not have a cause of action for discrimination based on national origin for the discharge. T.C.A. § 4-21-409.

E-Verify.

E-Verify is an Internet-based system that allows employers to determine the eligibility of their employees to work in the United States. It is administered by the U.S. Department of Homeland Security, USCIS, Verification Division, and the Social Security Administration. Employers submit information taken from a new hire's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services (USCIS) to determine whether the information matches government records and whether the new hire is authorized to work in the United States.

An advantage to using E-Verify under state law is that verifying employment with E-Verify is a defense to a state criminal charge of hiring an unauthorized alien, but obtaining one of the listed documents, if this is the only evidence the employer has, is not a defense to such a charge. Under federal law, the use of E-Verify creates only a rebuttable presumption that the employer has not knowingly hired an unauthorized alien.

More information about E-Verify can be found here: <https://www.uscis.gov/e-verify>.

[1] Employers are currently required under federal law to complete an I-9 form for all employees, but this does not extend to non-employees such as independent contractors. Also, federal law does not require employers to retain copies of identification documents used to complete the form I-9.