



FELS.
Farm Employers Labor Service
California Farm Bureau

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“Do I Really Need to Keep My Old I-9s Forever, and Other Questions about I-9 Compliance”

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**“DO I REALLY NEED TO KEEP MY OLD I-9S FOREVER, AND
OTHER QUESTIONS ABOUT I-9 COMPLIANCE”**

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Jennifer Shaw

Jennifer Shaw is the founder of Shaw Law Group. A well-respected expert in employment law for almost 30 years, employers rely on Jennifer to provide practical advice and counsel on a broad range of employment law issues, including wage-hour compliance, reasonable accommodation/leaves of absence, and hiring/separation. Named by Northern California Super Lawyers magazine as one of the top attorneys in California every year since 2009 and the recipient of numerous other awards, including the 2019 Sacramento Business Journal's "Women Who Mean Business," Jennifer is a frequent speaker on employment law topics, and a regular guest on local television and radio. After receiving a Bachelor of Arts degree in economics with honors from the University of California, Santa Cruz, Jennifer graduated magna cum laude from the University of San Francisco School of Law, where she was the editor-in-chief of the law review.



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The Disclaimer

- This program is intended to be a general overview, and should not be considered legal advice regarding your specific situation
- Consult with your regular employment law counsel before making any changes to your practices

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Welcome!

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Why Complete a Form I-9?

- Immigration and Nationality Act (INA)
- Immigration Reform and Control Act (IRCA)

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Who's Covered?

- The Form I-9
 - All U.S. employers
 - All employees hired on or after November 6, 1986
 - Do not need for employees working outside the U.S., independent contractors, or "casual domestic workers"

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Get It Right!

Enforcement by Immigration Customs Enforcement (ICE)

- Increased enforcement in past years
- Significant penalties

Enforcement by Department of Justice, Immigrant and Employee Rights

- Discrimination and retaliation

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The Form I-9

- Three-section form completed by employee and employer
- Sections 1 and 2 completed at the time of hire
- Section 3 completed for name changes, reverification, and rehire

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The Form I-9 – Which Version?

- Always use most current version (the current version is dated 10/21/2019 in the bottom left-hand corner)
- Reverifications and rehires may be included on the original Form or the most recent version
- Spanish version may only be used in Puerto Rico (but it can be a great translation tool, if needed!)

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Section 1

- Completed by the employee on or before their first day of work
- Must be completed fully
 - Social Security Number optional unless using E-Verify
 - Telephone and email are optional, but the employee must enter "N/A" in the spaces if they opt out
 - Must be a physical address – not a post office box
- Signed and dated

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Section 1 (cont.)

- Must select citizenship status
 - Permanent Residents must provide an "Alien" or "USCIS" number
 - Non-Citizen National
 - Individuals authorized to work must provide:
 - Alien or admission number and the expiration date on the EAD, or
 - Country of foreign passport and number accompanied by a Form I-94/94A

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Section 1 – Preparer/Translator

- Must check box one way or the other
- If a preparer/translator was used, they must complete their information
- Employee must still sign Section 1

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Section 1 – Best Practices

- Always review Section 1 of the Form I-9 on the day the employee completes it
- If there is an omission, ask the employee to correct immediately
- If there are errors, ask the employee to correct or to complete a new Form I-9

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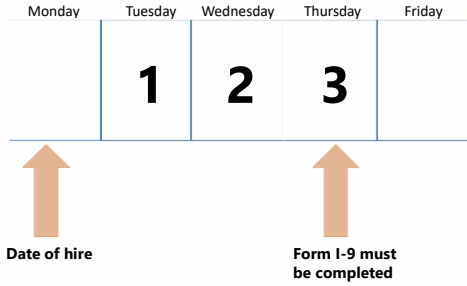
Section 2

- The heart of the Form I-9
- Completed by the employer (or the employer's representative)
- Completed within 3 business days of the date of hire

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The Monday–Thursday Rule



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Section 2 – Lists of Acceptable Documents

- List A documents verify both identity and work authorization
- List B documents verify only identity
- List C document verify only work authorization

To verify the employee's identity and work authorization, you must have either:

- A List A document, OR
- A List B and a List C document

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Section 2 – Examining Documents

- Physically examine the document(s)
 - Do the document(s) appear to be genuine?
 - Do the document(s) appear to reasonably relate to the person presenting them?
 - Is the document unexpired?

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Section 2 – Receipts

- Receipts to represent the replacement of **lost, stolen or damaged documents** are acceptable for 90 days
- Do not accept receipts for the application for new documents, or for extensions on expired documents

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Section 2 – Best Practices

- Do not tell employees which documents to use
- Accept documentation that appears to be genuine

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The Form I-9 – Strict Compliance

- Employer must physically examine unexpired documents to identify the employee's identity and employment authorization
- Must be completed in the employee's presence
- Strict timeline for completion – within 3 business days of the first day of work for pay
- The person examining the documents must complete Section 2

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Form I-9 – Temporary Exceptions Due to COVID-19

- As of March 2020, “Temporary Virtual Verification” process
- Relaxed further as of April 2021
- Currently extended ONLY through July 31, 2023
- Must adhere to the following requirements:
 - Develop and maintain written documentation of the remote onboarding and telework policy
 - Adhere to the standard timing requirement (3 business days)
 - Inspect the documents remotely using video, email, fax, or similar method
 - Maintain copies of the documents inspected remotely

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Form I-9 – Temporary Exceptions Due to COVID-19 (cont.)

- Write “Remote inspection completed on XX/XX/XXXX” in the Section 2 Additional Information box, or Section 3 for reverifications
- Track all Forms I-9 that have been completed using virtual verification to ensure the required physical inspection
- Once the employee returns to in-person work OR the virtual verification policy ends, coordinate the in-person inspection within 3 business days

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Form I-9 – Temporary Exceptions Due to COVID-19 (cont.)

- Annotate the Form I-9 to record the physical inspection date
 - If the same person, add the physical inspection date and initials in the Additional Information box
 - If a different person, complete a new Section 2, OR note the date, full name, and title of the person inspecting in the Additional Information box

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Section 2 – Keeping Documentation

- Should you keep copies of the documents submitted by the employee?
- It depends!



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Section 2 – Keeping Documentation (cont.)

Benefits:

- Helps resolve technical errors
- Helps investigate allegations of false document
- Provides a good-faith defense
- Easier for internal audits

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Section 3

- Reverification
- Receipts
- Rehire
- Name changes

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Section 3 – Reverification

- Only re-verify those documents provided to establish work authorization
- Do not re-verify:
 - Documentation for U.S. Citizens and Non-Citizen Nationals
 - Lawful Permanent Residents who presented an I-551, Permanent Resident, or Alien Registration Receipt card
 - List B documents (which establish identity)

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Section 3 – Reverification (cont.)

- Complete all of Section 3: document title, document number, sign, and date
- If you need to complete reverification more than once, complete Section 3 of the newest version of the Form I-9 and attach to the original Form

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Section 3 – Receipts

- Receipts must be updated with appropriate documents within 90 days of the acceptance of the receipt used to certify Section 2
- Does not need to be the document represented by the receipt originally presented

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Section 3 – Rehire

- Only if Form I-9 was originally completed within last 3 years
- Simply enter the rehire date
- If the formerly presented work authorization has expired, write the document title, number, and expiration date of any eligible document presented by the employee
- Sign and date Section 3

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Section 3 – Name Changes

- Must use for rehires or reverification
- Not required, but recommended, in other circumstances
- If you discover the employee is using a different identity, complete a new Form I-9 and staple to the prior Form I-9

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Form I-9 Retention Requirements

- One year after the date of termination
OR
- Three years past the date of hire

WHICHEVER IS LATER!

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Form I-9 Retention Requirements (cont.)

Example 1



Joe was hired September 15, 2022. He quit today.
1 year past day of term = June 6, 2024
3 years past date of hire = September 15, 2025

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Form I-9 Retention Requirements (cont.)

Example 2



Bill was hired March 26, 2014. He retired today.
1 year past day of term = June 6, 2024
3 years past date of hire = March 26, 2017

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Form I-9 Retention Requirements (cont.)

Example 3



Sally was hired April 1, 2018. She quit on October 1, 2020.
1 year past date of term = October 1, 2021
3 years past date of hire = April 1, 2021

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Electronic Form I-9 Retention

- Any electronic system used to retain Forms I-9 must include:
 - Reasonable controls to ensure the system's integrity, accuracy, and reliability
 - 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 electronic signatures

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Electronic Form I-9 Retention (cont.)

- Any electronic system used to retain Forms I-9 must include:
 - Inspection and quality assurance program that regularly evaluates the system and includes periodic checks of electronically stored Forms I-9, including the electronic signature, if used
 - Indexing system that allows users to identify and retrieve records maintained in the system

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Electronic Form I-9 Retention (cont.)

- If you complete and retain Forms I-9 electronically, you must maintain documentation of the business processes that:
 - Create, or generate, the retained Form I-9
 - Modify and maintain the retained Form I-9
 - Establish the authenticity and integrity of the forms, such as audit trails

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Electronic Form I-9 Retention (cont.)

- If you complete the electronic Form I-9 using electronic signatures, the system capturing the signature must:
 - Allow individuals to acknowledge that they read the attestation
 - Attach the electronic signature to an electronically completed Form I-9
 - Affix the electronic signature at the time of the transaction

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Electronic Form I-9 Retention (cont.)

- If you complete the electronic Form I-9 using electronic signatures, the system capturing the signature must:
 - Create and preserve a record verifying the identity of the person producing the signature
 - Upon the employee's request, provide a printed confirmation of the transaction
 - Include a method to acknowledge you have attested to the required information in Section 2

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Other Things to Know About the Form I-9

- Storage on site, off site
- Must be easily retrievable in case of inspection – 3 business days to prepare
- Photocopies of documents must be kept with the Forms I-9 for the same length of time

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Best Practices for Completing an Internal Form I-9 Audit

- Keep the process transparent
 - Memo to file
 - Inform the union, if applicable
- Keep corrections transparent
 - Strike through, initial, and date
 - Never black out or use white-out
- Treat all employees the same
 - Address corrections all at once, not piece-meal
 - Provide a "reasonable" amount of time to correct

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Best Practices for Completing an Internal Form I-9 Audit (cont.)

- Confirm you have the necessary documents
 - Run an active employee listing
 - Confirm you have a Form I-9 on file for each active employee hired on or after November 6, 1986
 - Separate any terminated employee Forms I-9 and determine applicable retention date

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Best Practices for Completing an Internal Form I-9 Audit (cont.)

- Review Section 1
 - Is each section fully completed?
 - Are the citizenship selections and dates correct?
- Review Section 2
 - Is the hire date completed?
 - Is the Form completed and signed?
 - Is there a List A or combination of List B and List C documents?
 - Are work authorization documents that must be re-verified up-to-date?
 - Receipts have been updated?

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Best Practices for Correcting Identified Issues

- Remember - be transparent!
- Employee completes corrections in Section 1
- Employer completes corrections in Section 2

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Best Practices for Correcting Identified Issues (cont.)

- To make corrections:
 - Draw a line through incorrect information
 - Enter correct information
 - Initial and date corrections
- If completing a new Form, use current version
 - Attach to old Form, if applicable
- Do not back date

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Best Practices for Correcting Identified Issues (cont.)

- Don't:
- Terminate or suspend individuals prior to giving them a reasonable amount of time to correct
 - Require employees to provide additional, unnecessary documents
 - Limit the range of documents an employee may present
 - Set the scope of the audit based upon a protected class

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Questions/Comments

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2023 Upcoming Webinars

Performance Management with a Modern Spin

June 21

The Million Dollar Violation: Wage-Hour Compliance 101

July 25

The ABC's of California's Healthy Workplace, Healthy Families Act Sick Leave

August 8

Sexual Harassment Prevention and Other EEO Issues (AB 1825/SB 1343 Compliance Training for "Supervisors"/All Employees)

August 1
October 17
December 7

Sexual Harassment Prevention and Other EEO Issues (SB 1343 Compliance Training for Staff)

August 9
October 11
December 5

Mandated Reporter Training for HR Professionals and Leaders (AB 1963 Compliance)

August 10
October 24

Intensive Workshop: Effectively Managing Leaves of Absence and Reasonable Accommodations (Advanced Topics)

August 15 (Day 1)
August 22 (Day 2)

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2023 Upcoming Webinars (cont.)

HR 101 for Leaders and HR Professionals
September 26

California Employee Handbook Update (2024)
November 14

**Intensive Workshop: Conducting Effective
Internal Investigations**
October 12 (The Fundamentals)
October 19 (All-Day Mock Investigation)
October 26 (How to Draft Effective
Investigation Reports)

Annual Employment Law Update (2024)
November 30
December 12
January 9, 2024



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Our Partnership with California Civil Rights Department

“Workplace Insights with Shaw Law and the CRD!”

Every month, Melissa Whitehead and Rashida Harmon, Senior Counsel of the CRD’s Outreach and Education Unit, cover a key employment law topic and answer your questions! Topics TBA as developments dictate.

Check out dates and topics here:

<https://shawlawgroup.com/employment-law-training-calendar/>

Thank You!



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Shaw Law Group, PC is a woman-owned employment law firm with a 10-year track record. The firm's namesake, Jennifer Brown Shaw, has almost 25 years of experience in workplace law. Shaw Law Group is small to ensure the firm's leadership is involved in every matter.

Our professionals focus on what clients want the most: timely advice, expert training, and thorough, independent investigations.

Below are some of the services Shaw Law Group offers:

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- Exempt/non-exempt classification analysis
- Layoffs/RIFS/WARN
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- Leave of absence/reasonable accommodation management

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- Public and private sector
- Group and individual
- Live and webinar
- Key employment law topics
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- Leaves of absence/reasonable accommodation
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- Social media/privacy
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- Defending investigations in court
- Assessment and review of others' investigations

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- Culture audit
- Wage-hour compliance
- Preparation for agency investigation
- Vulnerability assessments
- PAGA claim evaluation

Litigation Monitoring and Support

- Objective assessment of defense counsel's work
- Billing analysis
- Oversight of legal representation as "in-house" lawyer would do
- Review of motion papers, discovery, depositions
- Summary judgment assessment
- Mediation assistance
- Trial themes and preparation

Agency Work

- Position statements
- Representation at informal conferences and hearings
- Agency audit defense
- Mediation and settlement

Expert Witness Testimony

- Investigation adequacy
- Wage-hour policy
- Handbook analysis
- AB 1825 compliance
- Training evaluation
- HR competence regarding discharge, discipline and policy implementation
- Interactive process and accommodation evaluation
- Skelly risk analysis
- Legal malpractice
- Attorney's fees motions

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