



To: FCA Members
From: FCA Legal Counsel
Subject: **I-9 Form FAQs**
Date: Sept. 21, 2022

Can an employee start work before completing the I-9 form?

No. The employee must complete Section 1 of the I-9 form on the first day of employment for wages. The employer must complete Section 2 of the I-9 form by the third day of employment for wages. Employers should understand that the importance of entering the dates in Section 2 is to ensure compliance with federal regulations. Section 2 includes two spaces that require dates. These spaces are for:

- The employee's first day of employment. This is the "date of hire" and when the employee begins employment for wages or other remuneration.
- The date the employer examined the documentation the employee presented to prove identity and employment authorization. This date must be no later than the third day after the employee starts working.

What is the employer supposed to do if the employee quits or resigns before the employee completed Section 1 and provided I-9 documents? For example, what if someone works a day or two and then quits before completing the I-9?

For people who were actually hired for a permanent position, long-term, or for more than the three-day period, but then quit after a day or more, the employer should note the facts on the I-9 form for that particular ex-employee. In any situation, the employee should have completed Section 1 on the first day of employment. If the employee accepts the employer's job offer before the first day, the employer can ask the employee to complete Section 1 before the first day of work.

If an employer hires an employee to work for fewer than three business days, the employer and employer must complete Sections 1 and 2 by the first day of employment. This requirement applies when the employer intends at the outset to hire an employee for fewer than three business days. In situations where the employer has no idea, at the time of hire, that an employee will quit after the first day or within a week of stating employment, the best practice is to make sure all employees complete Section 1 of the I-9 on the first day the employee shows up for work.

If the employee does not come back on day two or after, the employer will have complied with I-9 regulations because the employer does not have to inspect the employee's documents until the third day of employment. The I-9 will show that the employee completed his or her portion on day one of employment as required.

Again, if the employee quits after day three of employment, the employer must still have completed Section 2 of the I-9 by the third day of employment.

What happens if the employer forgets to have the employee complete the I-9 on the first day, and then the employee quits?

If the employer fails to have the employee complete the I-9 on the first day of employment, then the employer is not in compliance. The employer should not permit an employee to begin working if the employee fails to complete Section 1 of the I-9 on the first day of work (or the HR department simply forgets to require it).

If the employer finds that it does not have proper systems in place to correct a pattern of noncompliance, even if accidental, it should immediately correct the current onboarding procedure to ensure that all new employees complete Section 1 on day one of employment. Doing so will not retroactively bring the employer into compliance but will likely help mitigate any fines the government audit the employer.

The ICE fact sheet describing its enforcement authority also lists penalties for substantive and technical violations. If an employer has not had any DHS audits in the past, they are probably not on the government's radar but should make every effort to correct their onboarding process immediately. This demonstrates a good faith intent to comply, once the employer discovers the errors. Employers should review and amend the current onboarding process to meet all I-9 requirements.

Bottom Line

If the employee does not complete Section 1 of the I-9 on day one, the employer is not in compliance with the I-9 regulations, regardless of the reason. Likewise, if the employer does not complete Section 2 of the I-9 by the third day of employment, it is not in compliance. The employer should do whatever it can to comply going forward and revise onboarding procedures and internal accountability accordingly.