

Pre-populating Section 1 of the Form I-9 through an Applicant Tracking System (ATS)

Question:

Is it permissible for an employer to pre-populate Section 1 of an electronic Form I-9 using information collected from the employee through an Applicant Tracking System (ATS) during the new hire onboarding process?

Analysis:

No. In the November 2016 issue of U.S. Citizenship and Immigration Services' (USCIS) [E-Verify Connection newsletter](#), it stated that "Form I-9, Section 1, cannot be auto-populated by an electronic system that collects information during the on-boarding process for a new hire." Employers are, however, permitted to auto-populate the following fields in Section 2: Employer's Business or Organization Name, Employer's Business or Organization Address (Street Number and Name), City or Town, State, and Zip Code.

The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) has also provided general guidance on this issue, taking the position that, from an anti-discrimination perspective, it discourages the practice of an employer pre-populating Section 1 with previously obtained employee information.

OSC believes that this practice increases the likelihood of including inaccurate or outdated information in Section 1. Moreover, OSC states that employers relying on previously gathered employee information may be more likely to overlook that a particular employee has limited English proficiency ("LEP") because Section 1 has been pre-populated by the employer. As a result, the employer may fail to provide that employee with translation or interpretation assistance in order to ensure the accuracy of Section 1 and/or in order to assist the employee in understanding the request for documents relating to Section 2.



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