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Employers who have acquired another company or have merged with another company have two options:

Option A: Treat all acquired individuals as new hires and complete a new Form I-9 for each individual regardless of the employee's original hire date. If you choose this option, you must complete new Forms I-9 for all of your acquired employees, without regard to actual or perceived citizenship status or national origin in order to ensure that you do not discriminate against new or existing employees. In addition, when completing new Forms I-9, you must allow all employees to choose one document from List A or a combination of one document from List B (containing a photo) plus one document from List C. You must enter the effective date of the acquisition or merger as the date the employee began employment in Section 2 of the new Form I-9.

Option B: Treat acquired individuals as employees who are continuing uninterrupted in their employment status with a reasonable expectation of employment at all times, as those concepts are defined in 8 Code of Federal Regulations (CFR) 274a.2(b)(1)(viii), and retain the previous owner's Forms I-9 for each employee. You are liable for any errors or omissions on the previously completed Forms I-9; therefore, you should review each Form I-9 with the employee and update or re-verify the employee's information, as necessary. See note below for employees hired on or before November 6, 1986.

Note: Employees hired on or before November 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times, as those concepts are defined in 8 CFR 274a.2(b)(1)(viii), are exempt from completing Form I-9 and cannot be verified in E-Verify. If you determine that an employee hired on or before November 6, 1986 is not continuing in his or her employment or did not have a reasonable expectation of employment at all times, and is therefore a new hire, the employee may be required to complete a Form I-9. See 8 CFR 274a.2(b)(1)(viii) and 274a.7.

Federal contractors with the FAR E-Verify clause have special rules relating to the verification of existing employees. For information on verifying existing employees, see the Supplemental Guide for Federal Contractors.

If you choose to complete new Forms I-9 (Option A), in order to ensure that you do not engage in discrimination, you must do so for all of your acquired employees, without regard to actual or perceived citizenship status or national origin.

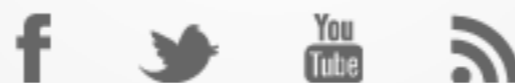
Mergers and acquisitions can be a very complicated area of the law and determining whether or not employees are continuing in their employment with the new entity for Form I-9 purposes is often not clear. For that reason USCIS strongly recommends that any business confronted with this question consider retaining private legal counsel.

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