



Insights: Alert

New Form I-9 and Alternative Procedure Available for Remote Verification

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Under the Immigration Reform and Control Act of 1986, all employers are required to verify the identity and employment eligibility of all employees hired after November 6, 1986. To do this, employers must complete Employment Eligibility Verification Form I-9 ("Form I-9") for each employee and verify their identity and work authorization by a physical review of the employee's documents. Specifically, employers must examine original documents to determine that the documents reasonably appear to be genuine and relate to the employee presenting it.

As expected, the United States Citizenship and Immigration Services ("USCIS") announced last week that it would unveil a new Form I-9 on August 1, 2023. The current version of the form expired back in 2022 but the USCIS had said that until a new version was released, employers should continue using the expired version.

According to the USCIS, the new form will be one page and easier for employees and employers to complete. The accompanying instructions also have been trimmed. Employers can begin using the new form on August 1, 2023. The expired version can continue to be used until October 31, 2023.

Alternative Procedure

Some employers may be able to avail themselves of a new alternative procedure for completing the Form I-9. Specifically, if employers use the web-based program, E-Verify, they may conduct remote verification of the documents by live video. The alternative procedure also requires employers to keep a copy of all documents the employee presents and complete an E-Verify tutorial on fraud awareness and anti-discrimination training.

Use of the alternative procedure is optional. Employers who use E-Verify may continue to examine documents in person or limit physical examination of documents for onsite or hybrid employees and use the alternative procedure for remote employees. For those employers whose workforce is all or predominantly remote, this alternative procedure is a welcome flexibility.

Covid Pandemic Flexibilities

During the pandemic, the USCIS, on a temporary basis, allowed employers to verify documents remotely. That policy is ending soon. By August 30, 2023, all employers must complete the required in-person verification of those employees who were verified remotely during the period March 20, 2020 to July 31, 2023.

Employers who were enrolled in E-Verify when they verified documents remotely can satisfy the requirement to physically examine documents by using the new alternative procedure.

Employers should pay attention to the compliance issues surrounding remote verification and satisfying the physical examination requirement. While the new alternative procedure allows for continued flexibility, it is only for those employers who use E-Verify. A July 21, 2023 press release suggests that the government will not focus its enforcement efforts on violations for failing to complete physical document examination by August 30, 2023 if the examinations are completed “within a reasonable period of time.” Thus, the physical examination requirement – in person or by live video – should not be ignored.

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