

# Electronic Alert

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## **What's New with the Form I-9: An Updated Form, E-Verify & Reverification Requirements**

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Many of the relics from COVID-19 have started to disappear, and remote inspection of Form I-9 documents is no exception. Starting in March 2020, the Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) gave employers flexibility to remotely verify documents for the I-9 process as many employers did not see their new hires in person to verify their documents. This practice is now ending.

### **An End to the Pandemic-Era Remote Verification**

As of July 31, 2023, employers may no longer verify Form I-9 documents remotely. This means that, in general, checking documents via video link, fax, or email will no longer suffice.

However, beginning August 1, 2023, employers enrolled in E-Verify may verify Form I-9 documents electronically via a live video call. There is a specific process employers must implement if they wish to use E-Verify. The process begins with the employee sending copies of their I-9 documents to the employer. After receiving the documents, the employer must:

1. Look at copies of the I-9 documents (front and back) or an acceptable receipt to ensure the documents reasonably appear to be genuine.
2. Complete a live video interaction with the document-holder to ensure the documents reasonably appear to be genuine and related to the individual.
3. Mark on the Form I-9 that an alternative procedure was used to examine the documents for Section 2 or for reverification. On the new Form I-9, as discussed below, there is a checkbox for this.
4. Keep a copy of the documentation (front and back if two-sided).
5. In the event of an investigation or audit by federal agencies, make copies of the documentation available.

### **Reinspection of Documents is Required**

Employers who conducted remote verification of Form I-9 documents between March 20, 2020, and July 31, 2023, must inspect those identity and employment eligibility documents again. In general, an employer must physically reinspect the employee's I-9 documents in the employee's physical presence no later than August 30, 2023, and note the updated in-person inspection on the Form I-9.

Employers may use an authorized representative for this purpose. According to ICE, "an authorized representative can be any member of the general public, personnel officer, foreman, agent, or notary public where permissible," but employees cannot be authorized representatives. Notary publics should

not put a notary seal on the Form I-9, as they are not acting in their notary capacity when they verify the documents. The third-party representative must complete all the employer's Form I-9 duties, including reviewing Section 1 of the Form I-9 after the employee completes it. However, employers will be liable for any violations regarding the I-9 form or verification, including any violations committed by the authorized representative.

Alternatively, beginning August 1, 2023, employers enrolled in good standing in E-Verify may re-inspect an employee's Form I-9 documentation electronically via a live video call pursuant to the steps outlined above if all the following conditions are met:

1. The employer was enrolled in E-Verify at the time they performed the remote examination of the employee's Form I-9 documentation;
2. The employer created an E-Verify case for the employee; and
3. The employer performed the remote inspection between March 20, 2020, and July 31, 2023.

To be in good standing, an employer must be enrolled in E-Verify for all hiring sites in the U.S. Employers qualified to use this alternate method may apply it consistently to all workers or to only those who are fully remote. However, a worker may decline to participate in the alternate procedure and submit documentation for an in-person physical inspection.

### **Anti-Discrimination Requirements**

Employers must be careful not to ask every employee to reverify their I-9 eligibility documents regardless of how they were originally verified, as unnecessary document requests can constitute employment discrimination based on citizenship or immigration. Additionally, employers must administer E-Verify in a non-discriminatory way. While solely using E-Verify for remote employees is acceptable, selecting employees based on criteria that aligns with a protected class is not.

### **New Form I-9**

Beginning August 1, 2023, a new Form I-9 will be available for use. Employers will be required to use the new version beginning November 1, 2023, but can begin using it as of August 1.

The new Form I-9 is a streamlined version of the older version. Notably, it reduces Sections 1 and 2 to a single-sided sheet and reduces the instructions from 15 pages to 8 pages. As discussed above, the new form also allows employers to check a box indicating they examined the Form I-9 documents remotely through a DHS-authorized alternative procedure instead of through physical examination.

With big changes happening in the world of I-9s, it is a great time for employers to check their compliance with the new rules. Employers should contact a trusted legal advisor if they have questions regarding the new Form I-9 requirements.

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