

3 WORKSITE I-9 COMPLIANCE UPDATES: THE TIMES THEY ARE A CHANGIN' ... FOR THE BETTER?

Insights
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The USCIS approach to immigration compliance is changing rapidly as we come out of the COVID-19 pandemic. While employers must use Form I-9 to verify employment eligibility, it is an often-overlooked requirement that may open up employers to government inspections that can be time-consuming and costly. Moreover, the Form I-9 rules are expected to change this year as the government looks to enforce I-9 compliance more stringently and levy larger fines for noncompliance. This means employers must be familiar with any changes to I-9 requirements and ensure all employees complete the forms correctly. What are the top three things you need to know about new and potential changes impacting I-9 compliance?

1. Post-COVID Employee Verification Alternatives

The Department of Homeland Security [published a proposed rule](#) last August that would allow the government to consider possible "alternative options for document examination procedures." During the COVID-19 pandemic, alternative options for remote employee verification were put in place to allow the use email, fax, video, chat applications, and other electronic means when the employer or its authorized representative could not meet the employee in person.

Under the current COVID-19 flexibilities, employers will be able to remotely review documents in certain circumstances [until July 2023](#). If the proposed rule is finalized, however, it would create a permanent protocol on remote document review.

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Under this proposal, the rules would be updated to allow the Secretary of Health and Human Services to authorize the use of those alternative options for remote employee verification going forward. The Secretary may allow these alternatives as a possible pilot program as long as they are temporary in nature and have an appropriate level of security to minimize the risk of fraud.

How will this affect your procedures? The use of remote employee verification will have an impact in several areas:

- **Updated form.** Newer versions of the Form I-9 may have areas to indicate remote verification and whether physical verification was confirmed at a later date.
- **Document retention.** The uptick in remote verifications performed electronically may increase of the use of e-forms across the board. Some employers may soon be moving towards a completely electronic process.
- **Expanded training.** With increased remote verification, training for employers and authorized representatives will need to be expanded to make sure they are conversant with the new requirements. This may include mandatory document fraud detection and discrimination training.

2. Expect a New Version of Form I-9

This should be the year we see a new, revised version of the Form I-9. Notably, the last version of the form was released on October 21, 2019, which is pre-pandemic. Some of the proposed changes that could be implemented are:

- A single-page format encompassing Sections 1 and 2; Section 3 will be a supplement that can be printed and used as needed;
- A streamlined set of instructions for easier reading;
- Loosening of some technical requirements (date formats, N/A's, etc.); and
- Technical updates to allow use of a PDF version on a wider array of electronic devices.

3. Increased Fines and Penalties

The proposed changes are all tentative and subject to revision, but the new Notice of Intent to Fine (NIF) penalties

are already in practice. In 2022, the Department of Homeland Security and Immigration and Customs Enforcement raised the fines as follows:

- For substantive and uncorrected technical errors, the penalties now range from \$252 to \$2,507. This is for first offenses.
- For second offenses or reoccurring technical offences the fines have increased to \$1,161 – \$2,322.

The penalties for recruiting, referral, or hiring unauthorized noncitizens are also increasing as follows:

- The penalty for the first offense has increased from \$590 – \$4,722 to \$627 – \$5,016.
- The penalty for the second offense has increased from \$4,722 – \$11,803 to \$5,016 – \$12,537.
- The penalty for the third offense has increased from \$7,082 – \$23,607 to \$7,523 – \$25,076.

The penalties related to Form I-9 errors have increased substantially, so the cost of non-compliance is potentially enormous. Estimates for the number of I-9 errors for an employer range between 50% – 75%. This can result in massive fines and cost employers time and resources as they navigate the NIF process.

Conclusion

With new changes coming, the chance of errors only increases, which makes it imperative for employers and their Human Resources teams to stay up to date and compliant. Compliance is confusing, but one of the best ways to avoid hefty fines is to perform self-audits with the assistance of attorneys who have knowledge and experience regarding best practices and practical guidance on implementation.

Fisher Phillips will continue to monitor these changes and provide guidance that not only meets ICE requirements but matches your company's needs. Make sure you are subscribed to the [Fisher Phillips Insight System](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Immigration Practice Group](#).