



All Employers Must Soon Use New I-9 Form – And E-Verify Users Get Remote Verification Flexibility: 8 Compliance Tips for Employers

Insights

7.24.23

Federal immigration officials just made critical changes to modernize the I-9 employment verification process, not only announcing a new I-9 Form but providing remote verification flexibility for qualified employers that use E-Verify. The Department of Homeland Security announced on July 21 that the long-awaited new Form I-9 will be available for employers to use on August 1 – and that all employers must use the new form by November 1. Here are eight best practices for compliance given the new rules soon in effect.

DHS Makes Changes to the Streamlined Form I-9

Employers should be on the lookout for the new Form I-9 in the next week and can begin using it on August 1. You must use the new form by November 1. The full list of DHS's changes [can be found here](#), but some highlights include:

- Reduced Sections 1 and 2 to a single-sided page by merging some fields;
- Moved the Section 1 Preparer/Translator Certification area to a separate, standalone Supplement A that employers can provide to employees, if needed;
- Ensured the form can be filled out on tablets and mobile devices;
- Ensured the form can be downloaded easily and removed the requirement to enter “N/A” in certain fields;
- Revised the Lists of Acceptable Documents page to include some acceptable receipts, as well as guidance and links to information on automatic extensions of employment authorization documentation; and
- Added a box that eligible employers must check if the employee’s Form I-9 documentation was examined under a DHS-authorized alternative procedure rather than via physical examination.

DHS also reduced the length of the Form I-9 Instructions from 15 pages to eight pages and streamlined the steps each actor takes to complete their section of the form, among other changes.

Qualified E-Verify Employers May Remotely Examine Form I-9 Documents

Under current Form I-9 rules, employers are required to physically examine an employee's original identity and work authorization documents, which has created compliance challenges for many employers with remote hires.

To remedy this problem, DHS also created a framework allowing the agency Secretary to authorize alternative document examination procedures as an optional alternative to the in-person physical document examination method.

The first alternative DHS authorized is an option for qualified E-Verify employers to remotely examine identity and work authorization documents beginning on August 1. Qualified E-Verify employers are those employers who are in good standing with E-Verify, have enrolled in E-Verify with respect to all hiring sites that use the alternative procedure, and comply with all E-Verify requirements.

If a qualified employer chooses to offer the alternative procedure to new employees at an E-Verify hiring site, you must do so consistently for all employees at that site. However, you may choose to offer the alternative procedure for remote hires only and continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as you do not adopt such a practice for a discriminatory purpose or treat employees differently based on their citizenship, immigration status, or national origin.

A qualified E-Verify employer may continue to examine documents physically instead of remotely. Additionally, you must allow employees who are unable or unwilling to submit documentation using the alternative procedure to submit documentation for physical examination.

Requirements of the Alternative Document Review Procedure

Within three business days of an employee's first day of employment, a qualified E-Verify employer (or an authorized representative acting on the employer's behalf) who chooses to use the alternative procedure must:

- Examine copies (front and back, if the document is two-sided) of Form I-9 documents or an acceptable receipt to ensure that the documentation presented reasonably appears to be genuine;
- Conduct a live video interaction with the individual presenting the document(s) to ensure that the documentation reasonably appears to be genuine and related to the individual. The employee must first transmit a copy of the document(s) to the employer (per Step 1 above) and then present the same document(s) during the live video interaction;
- Indicate on the Form I-9, by completing the corresponding box, that an alternative procedure was used to examine documentation to complete Section 2 or for reverification, as applicable;
- Retain a clear and legible copy of the documentation (front and back, if the documentation is two-sided). and

- Create an E-Verify case if the employee is a new hire.

DHS Provides Relief for Certain Employers Enrolled in E-Verify During COVID-19 Flexibilities

Perhaps the most significant development is the alternative solution DHS is now offering qualified employers who were left with an arduous task of bringing in all the employees they hired remotely during the COVID-19 pandemic to review their original documents and annotate their I-9s by the upcoming August 30 deadline.

Qualified E-Verify employers can use the alternative procedure to satisfy the required physical examination of an employee's documents for that Form I-9 if you:

- Were enrolled in E-Verify at the time they performed a remote examination of an employee's Form I-9 documentation for Section 2 or reverification while using the COVID-19 flexibilities;
- Created an E-Verify case for that employee (except for reverification); and
- Performed the remote inspection between March 20, 2020 and July 31, 2023.

Such employers should not create a new case in E-Verify. All qualified employers that use the alternative procedure instead of physical examination as described above must follow the steps of the alternative procedure and add "alternative procedure" with the date of examination (meaning the date the employer performed a live video interaction as required under the alternative procedure) to the Section 2 Additional Information field on the Form I-9 or in Section 3, as appropriate.

Employers who were not enrolled in E-Verify during the COVID-19 flexibilities must still complete an in-person physical examination by August 30.

8 Best Practices for Employers to Maximize Compliance

Even with the new improvements, the Form I-9 remains deceptively simple. Any time a one-page form requires eight pages of instructions, two supplements, a 146-page handbook on how to complete the form, and the potential for significant monetary and criminal penalties, it will continue to present a significant compliance challenge for employers. Here are eight steps you can take to create a culture of compliance:

1. Provide updated training for all managers, human resources personnel, and staff involved in the I-9 process;
2. Provide updated training for all involved in the E-Verify process, including training on fraud awareness and anti-discrimination;
3. Update immigration policies in handbooks;
4. If your company does not have an immigration compliance policy, now is the right time to consider implementing one;

5. Update internal business processes associated with I-9s and E-Verify;
6. If your company uses an electronic I-9 provider, contact the provider now to ensure its system incorporates the new changes and complies with [DHS requirements](#), including audit trails;
7. Enlist outside immigration counsel to conduct an attorney-client privileged audit of your I-9s that were completed from March 20, 2020, through July 31, 2023; and
8. Evaluate E-Verify advantages and disadvantages with your immigration counsel to determine if your company should take advantage of the remote verification option for E-Verify employers.

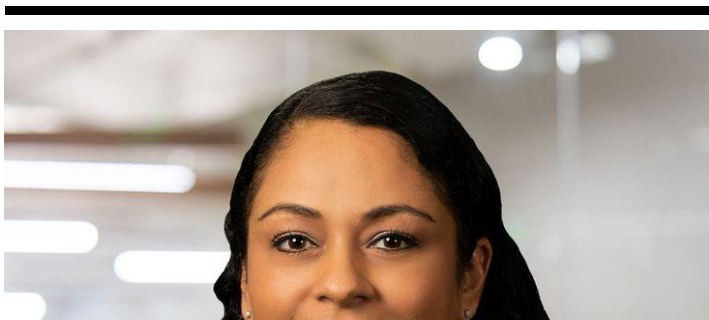
Conclusion

Fisher Phillips will continue to monitor developments once the Final Rules are published on July 25 and will provide additional guidance as it becomes available. We will also have a webinar in August to train employers on the New I-9 and alternative verification procedures. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information and invitations to our webinars. If you have further questions, contact your Fisher Phillips attorney, the [author of this Insight](#), or any attorney on our [Immigration Practice Group](#).

Related People



Jang Hyuk Im
Partner
415.490.9051
[Email](#)





Shanon R. Stevenson

Partner

404.240.5842

Email

Service Focus

Counseling and Advice

Immigration