

# WHAT ALL K-12 SCHOOLS NEED TO KNOW ABOUT IMMIGRATION: NEW FORM I-9 AND WORK VISA OPTIONS FOR TEACHERS

Insights  
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Immigration compliance remains a critical requirement for K-12 schools across the country. Not only do all schools need to ensure they comply with new I-9 rules and procedures, but many also have grown to rely on foreign national employees to round out their rosters of talented educators. Here is a quick summary of some helpful I-9 compliance tips as well as a round-up of possible work visa options for bringing aboard teachers from outside the country.

## Form I-9 Summary and Update

The Department of Homeland Security (DHS) recently made critical changes to modernize the I-9 employment verification process. It not only released a [new I-9 Form](#) and [new instructions](#) but also provided remote verification flexibility for qualified employers that use E-Verify. All employers, including K-12 schools, must use the new I-9 form by November 1. The full list of DHS's changes to the Form I-9 [can be found here](#).

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

DHS also [authorized](#) an option for qualified E-Verify employers to remotely examine identity and work authorization documents. 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.

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## ***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);
- On the new Form I-9, check the box to indicate that you used an alternative procedure in the Additional Information field in Section 2.
- Continue to complete the Form I-9 according to Form I-9 instructions and related guidance [on I-9 Central](#) and in the [M-274, Handbook for Employers](#).
- Create an E-Verify case if the employee is a new hire.

## ***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 at your school:

- Provide updated training for all supervisors, human resources personnel, and staff involved in the I-9 process;
- Provide updated training for all involved in the E-Verify process, including training on fraud awareness and anti-discrimination;
- Update immigration policies in handbooks;
- If your school does not have an immigration compliance policy, now is the right time to consider implementing one;
- Update internal business processes associated with I-9s and E-Verify;
- If your school 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;
- Enlist outside immigration counsel to conduct an attorney-client privileged audit of your I-9s; and
- Evaluate E-Verify advantages and disadvantages with your immigration counsel to determine if your school should sign up for E-Verify in order to use the remote verification option for E-Verify employers.

## **Work Visa Options for Foreign Teachers**

K-12 schools sponsoring foreign national teachers for U.S. work visas can be a valuable solution to teacher shortages and to round out your talent pool. Some of the most common types of work visas for teachers are:

### ***H-1B Work Visa***

The H-1B visa allows a school to sponsor a foreign national to fill a professional teaching role. The teacher must have at least a bachelor's degree or the equivalent education and/or experience in a related field and must fill a position that requires at least a bachelor's degree or the equivalent in a specific field. The H-1B allows for an initial period of three years of employment and a maximum period of six years in H-1B status.

A lottery limits the number of new H-1B visas granted during each fiscal year to 85,000. Institutions of higher education, non-profit research organizations, and organizations

affiliated with institutions of higher education generally are exempt from the annual cap. If your school is interested in sponsoring teachers for the H-1B lottery, we recommend starting the processing in January 2024 to meet the lottery registration deadline in March 2024. If the H-1B is selected in the lottery and approved, the earliest it would take effect is October 1, 2024.

The quickest way for a K-12 school to hire a foreign national teacher is to find a teacher who is already working in the U.S. on an H-1B work visa. H-1B visa holders may take advantage of this “portability” provision that allows them to begin working for a new employer once the new employer’s H-1B transfer petition is filed, which can be accomplished in as little as 4 weeks. Moreover, the H-1B transfer petition is not subject to the H-1B lottery.

### ***Optional Practical Training (OPT) & STEM OPT Employment Authorization Cards***

Foreign students pursuing a post-secondary education in the U.S. generally utilize the F-1 student visa category. Upon completion of a recognized degree program, a foreign student may qualify for a period of 12-month period of OPT. The student must apply with USCIS for permission to engage in OPT, which must be in a field related to the student’s degree program.

Because practical training is fairly easy to obtain, in many cases it will be the ideal means of employing a foreign national teacher. Once the foreign national begins practical training, the employer can consider sponsoring the foreign national for H-1B status. OPT may be extended for an additional 24 months for F-1 students with a degree in science, technology, engineering, or mathematics who are employed by schools enrolled in the E-Verify program. K-12 schools interested in employing foreign students who have completed their degree should contact their local university’s Career Placement Center.

### ***J-1 Visas For Teachers***

The J-1 teacher program allows schools to sponsor full-time teachers in accredited public and private U.S. primary and secondary schools for up to three years. The foreign national must be sponsored by an officially designated exchange visitor program sponsor. Whether your school is already a designated exchange visitor program sponsor,

wishes to apply to become a sponsor, or prefers to work through an existing program authorized by the Department of State, J-1 teachers are an effective way to meet your hiring needs.

### ***R-1 Religious Teachers for Religious Schools***

A non-profit religious school may also sponsor a teacher for an R-1 visa to work at least part time (an average of at least 20 hours per week). To qualify, the teacher must have been a member of a religious denomination having a bona fide non-profit religious organization in the United States for at least two years immediately before filing the petition. For instance, a non-profit Jewish school could sponsor a Hebrew teacher for an R-1.

### **Conclusion**

If you have questions about the new Form I-9 or how to sponsor teachers for work visas to meet your labor needs, contact your Fisher Phillips attorney, the [author of this Insight](#), or any attorney in our [Immigration Practice Group](#) or on our [Education Team](#) to obtain further guidance.