



Are You Aware of New Options for Remote I-9 Completion? 11 Best Practices for Employers

Insights

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Every U.S. employer must verify employees' identity and eligibility to work – and while this process has generally been done in person, the federal government recently gave another option for qualified E-Verify employers to remotely examine Form I-9 documents. Qualified E-Verify employers are those who are in good standing with E-Verify, have enrolled in the program with respect to all hiring sites that use the alternative procedure, and comply with all E-Verify requirements. You should note that if you choose 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. Here is a brief background on both the well-established and new processes, as well as 11 best practices for meeting your employment verification requirements. *[To learn more about I-9 compliance, including how to conduct an internal audit, join our [advanced training webinar](#) on December 6.]*

In-Person Document Review Requirements

Since the inception of the I-9 process, employers have been required to perform an in-person, physical inspection of employees' identification and employment authorization documents. Under prior rules, when remote hires were not located near company offices or operations, employers were required to secure an "authorized representative" to conduct the necessary in-person document review in the employer's stead.

Document review by an authorized representative was questionable, as often the designated person would be a prospective employee's friend, neighbor, or relative – with no affiliation whatsoever with the employer and only a casual understanding of the purpose and proper completion of Form I-9. The likelihood of a substantive, uncorrectable error occurring due to the inexperience of an authorized representative was therefore extremely high. Worse, employers were fully liable for the errors.

A New Alternative Procedure Stems from COVID Flexibilities

In 2020, USCIS announced temporary flexibilities to accommodate employers and workplaces that were operating remotely to meet I-9 document review requirements in response to the COVID-19 pandemic. Those temporary rules allowed certain employees who worked remotely due to health and safety concerns to present documents via an electronic means for inspection by their employer.

That policy was extended and modified multiple times over the course of several years. In mid-2023, however, the special flexibilities expired.

At the same time that the COVID flexibilities came to an end, USCIS introduced a new version of Form I-9 (in August 2023) that included an innovative approach to the document inspection rules. Qualifying employers are now able to conduct virtual inspection of any employee's documentation presented for I-9 purposes, pursuant to an "alternative procedure." This new and permanently available process was a direct result of insights gained — both by employers and by USCIS — during the pandemic. Essentially, an electronic review process offers a more manageable, efficient approach that is less prone to inconsistency or human error.

Not all employers, however, are eligible to use the alternative procedure. To qualify, an employer must maintain a subscription to the E-Verify system in connection with all hiring sites. What is E-Verify? It's a web-based system that compares information from employee I-9 Forms with records available to USCIS and the Social Security Administration in an effort to confirm employment eligibility most accurately. E-Verify is itself an optional program, but employers that choose to forego use of E-Verify – or that use the program selectively for certain hiring sites – must continue to perform in-person document review for I-9 purposes, or they must complete the form in coordination with a third-party authorized representative, as described above.

Qualifying employers who are enrolled in E-Verify are able to utilize the alternative procedure by adhering to the following four rules:

- Examine copies of an employee's documents (provided in advance, via email, for example), both front and back, to ensure that these appear to be genuine.
- Examine an employee's documents a second time, via a live video interaction, again to confirm that these appear to be genuine.
- Tick a box on Form I-9 itself, indicating that the alternative procedure was used in examining documents.
- Retain "clear and legible" copies of the documents, front and back, provided electronically by the employee.

Aside from the above differences, employers remain equally subject to I-9 rules, whether or not they utilize the alternative procedure. Employees must complete and sign Section 1 of Form I-9 no later than their first day of employment, and employers must complete Section 2 within three business days of the first date of employment. When required, all employers must reverify an individual's work authorization using Section 3 of the form. In all related communications, employers must be careful to refrain from impermissible "document abuse" – such as asking for more documentation than required – or any other requests that might be construed as discriminatory or retaliatory in nature.

Pros and Cons of Using the Alternative Procedure

Arguably, the alternative procedure carries requirements that are more burdensome than the usual I-9 rules. For example, the alternative procedure requires an employer to examine an employee's documents twice, first by requesting and reviewing advance copies, and again via a live video meeting. And while an employers have the option to retain copies of employee documents under normal I-9 rules, employers using the alternative procedure are required to maintain those copies and produce them for inspection in the event of a government audit.

Despite these additional requirements, however, some employers find the alternative procedure to be extremely helpful in maintaining proper compliance with the law. This is especially true for employers with many, widely dispersed employees who may be working from home offices. Under the prior rules, such employees would be required to travel to an employer's location, often over a great distance, to complete the I-9 process. Or, an employer would be required to coordinate the process using various locally situated authorized representatives, all with differing understanding of the I-9 rules, communication methods, and organizational styles. For employers with many remote workers, this presented significant logistical and timing challenges, and would often result in otherwise avoidable and often irreversible errors in the completion of related I-9 Forms.

11 Best Practices for Employers

If you decide to use the alternative procedure to complete employee I-9 Forms, we suggest that you remain mindful of the following practices and considerations. Some of these are required by law and some are practical recommendations:

1. **E-Verify enrollment:** Ensure that you remain an actively enrolled participant "in good standing" with the E-Verify system, and otherwise remain in compliance with all E-Verify program requirements.
2. **Full organizational participation in E-Verify:** Ensure that your E-Verify account includes all hiring sites associated both with employees who are remotely employed and those who physically report to an employer location.
3. **Consistency in communications:** Establish a clear set of template communications to be used in instructing employees to produce electronic copies of documents and to be available for a live video interaction. Standard communications must be clear and compliant with nondiscrimination and other I-9 document rules.
4. **Technology:** Establish a preferred and consistent means of conducting a video interaction, such as MS Teams or Zoom, and ensure this is available to all related personnel conducting the alternative procedure and the employees whose documents will be verified.
5. **Electronic document repository:** Maintain a secure, well-organized repository for copies of employee documents presented during the I-9 process. Under the law, documents can be retained in hard-copy or electronically. For employers using the alternative procedure, an electronic system is recommended, given the remote nature of the process and the relative ease in maintaining documents, as compared with hard-copy printouts.

6. **Electronic document storage process:** Build a precise, regularly reviewed process for electronic document storage. Any electronic system used to generate or retain Forms I-9 must include reasonable controls to ensure system integrity, accuracy, and reliability, and to prevent and detect the unauthorized or accidental creation of, addition to, alteration of, deletion of, or deterioration of electronically stored documents. Employers should maintain a written inspection and quality assurance program for any I-9 document repository and a coherent indexing system for identifying and retrieving documents.
7. **Document retention rules:** Ensure that document copies are retained for the duration of an individual's employment and for either three years after the date of hire or one year after the termination date, whichever is later, consistent with pre-existing I-9 rules. It would be most convenient to simply save employees' document copies in the same place as the Forms I-9s themselves to ensure that all records are consistently retained/purged for each individual. Ensure that you store documents (both the identification/employment authorization documents used in completing the alternative procedure, as well as Forms I-9 themselves) separate from employees' personnel files.
8. **Authorize specific employees to perform the alternative procedure:** Identify specific, authorized personnel who will conduct the alternative procedure in association with employee I-9 processing. Access to electronically stored I-9 Forms and related documents should be restricted to those same individuals, likely members of the Human Resources or Legal team. This will ensure system integrity and security, and that the alternative procedure is being consistently conducted across your company or business unit.
9. **Ongoing training for related staff:** Provide regular training to authorized personnel in performing the alternative procedure. Such trainings should include the correct process for electronic document inspection, proper communications with employees, avoidance of substantive and technical errors in the completion of Form I-9, and steps to minimize the risk of wrongfully or accidentally altering or erasing electronic records.
10. **Audit trail:** Implement a system that creates a secure and permanent "audit trail" record when an individual creates, completes, updates, modifies, alters, or corrects an electronic file as part of the I-9 process. This record should include the date of access, the identity of the individual who accessed the electronic record, and the particular action they took.
11. **Electronic signatures:** If you complete the alternative procedure and overall Form I-9 process using an electronic signature, the related system must allow individuals to acknowledge that they read the related attestation. Electronic signatures must be affixed to related documents at the time of each transaction. Each signature should result in a record, which verifies the signatory's identity. And upon an employee's request, you must be prepared to provide a printed confirmation of the transaction.

Don't forget to join our [advanced training webinar](#) on December 6 to learn more about I-9 compliance, including how to conduct an internal audit.

Conclusion

Fisher Phillips will continue to monitor I-9 Form developments and will provide additional guidance as it becomes available. 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 [authors of this Insight](#), or any attorney on our [Immigration Practice Group](#).

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