

New Changes to Form I-9 and Form I-9 Inspection Procedures Require Immediate Attention

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The U.S. Citizenship and Immigration Services (USCIS) recently published the newest version of the Employment Eligibility Verification form, Form I-9. Employers are required by law to complete the Form I-9 to verify the identity and employment authorization of their employees within a certain period of time post-hire. This new version of the Form I-9 is only one page, instead of two; other changes include more detailed instructions and new guidance on acceptable receipts and auto-extensions of some documents on the Form I-9 List of Acceptable Documents. Employers may begin using the new edition beginning August 1, 2023, but may continue to use the 2019 version of the form through October 31, 2023. Beginning November 1, 2023, only the new Form I-9 dated "08/01/2023" may be used. The version date can be found at the lower left corner of the form.

In addition to the new Form I-9, USCIS also announced a new "Alternative Procedure" for the physical inspection requirement for Forms I-9 completed during Covid-19 flexibilities, specifically for employers who were enrolled in E-Verify during this time period. As we previously reported, employers have until August 30, 2023 to complete physical inspection of I-9 documents for Forms I-9 completed using remote inspection under the USCIS' Covid-19 flexibilities. Under this new "Alternative Procedure" rule, E-Verify employers who meet four requirements may choose an alternative procedure in lieu of physically examining Form I-9 documentation. To qualify for the alternative procedure, the employer must have:

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1. performed remote examination of an employee's documents between March 20, 2020, and July 31, 2023;
2. been enrolled in E-Verify at the time they completed the Form I-9 for that employee;
3. created a case in E-Verify for that employee (except for reverification); and
4. be currently enrolled in and continue to participate in E-Verify.

Employers who do not meet all four requirements above must perform an in-person physical examination of documents by August 30, 2023. Under the Alternative Procedure, employers must remotely examine the employee's Form I-9 documents by conducting a live video interaction for each employee whose documents were examined remotely under the temporary flexibilities but never in-person physically examined. The Form I-9 must then be annotated with the wording "alternative procedure," the date of the second remote document examination, and employer representative initials in Section 2 or in Section 3, as appropriate. These steps under the Alternative Procedure must also be completed by August 30, 2023.