

Form I-9 Updates: Alternative Document Verification Procedure and Revised Form I-9

MAI CHAO CHANG | 08.01.23

The Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) will implement changes beginning on August 1, 2023, introducing a new Form I-9 and allowing remote document verification for E-Verify users.

Current regulations require employers to physically examine documents presented by new employees within three business days after the first day of work to ensure that documents reasonably appear to be genuine and relate to the employee. Employers then complete Section 2 of Form I-9. Employers are generally not required to make and retain copies of their employees' identification and employment verification documents, but if employers opt to do so, they must apply the same process to all employees. Employers who use E-Verify follow different rules, including the document retention requirements for employee-provided documents.

Alternative Document Verification Procedure for E-Verify Users

Beginning on August 1, 2023, DHS will permit qualified employers enrolled in E-Verify to use an alternative procedure to remotely verify an employee's I-9 identity and employment eligibility documents. This alternative verification method is not available for employers who do not use E-Verify.

Under the new guidelines, within three business days of an employee's first day of employment, a qualified employer (or an authorized representative acting on such an employer's behalf, such as a third-party vendor) who chooses to use the alternative procedure must do the following:

1. Ask the employee to send a copy of the document(s) satisfying I-9 requirements to the employer. The employer shall then examine the copies (front and back, if the document is two-sided) to ensure that the documents presented reasonably appear to be genuine;
2. 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 document(s) presented must be the same as originally provided;
3. 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;
4. Retain, consistent with applicable regulations, a clear and legible copy of the documentation (front and back if the documentation is two-sided); and
5. In the event of a Form I-9 audit or investigation by a relevant federal government official, make available the clear and legible copies of the identity and employment authorization documentation presented by the employee.

This alternative process is optional, and qualified employers may continue to examine documents instead of using the alternative procedure.

Qualified employers who were enrolled in E-Verify during the COVID-19 temporary flexibilities may use this alternative procedure to satisfy the requirement to physically examine Form I-9 documentation.

Form I-9 Updates

Beginning on August 1, 2023, employers may begin using the new version of Form I-9. USCIS recently rolled out this new form, which has been streamlined and shortened. The revised Form I-9 will have the following changes:

- Sections 1 and 2 are reduced to a single-sided sheet;
- Fillable form on tablets and mobile devices;
- The preparer/translator certification section will become a standalone supplement that employers can provide to employees when necessary;
- The Reverification and Rehire section will become a supplement that can be printed if needed;

- The Lists of Acceptable Documents page is revised to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization documentation;
- Form instructions are reduced significantly;
- A checkbox is included allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination.

Employers may continue to use the older version of Form I-9 (Rev. 10/21/2019) through October 31, 2023. After that date, employers who fail to use the new form will be subject to penalties. New Form I-9 edition can be downloaded from the USCIS website at www.uscis.gov/i-9.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

Author

Mai Chao Chang
(608) 286-7240