



ALERTS

USCIS Announces New I-9 As Of Aug. 1, Use Will Be Mandatory On Nov. 1

July 24, 2023

Highlights

U.S. Citizenship and Immigration Services is set to release a new version of Form I-9 on Aug. 1, 2023

Use of the new I-9 is required starting Nov. 1, 2023; from Aug. 1 to Oct. 31, employers may continue to use the current I-9 or the new I-9

Qualified employers enrolled in E-Verify may be able to take advantage of a proposed new alternative method to verify documents for new remote hires

On July 21, the U.S. Citizenship and Immigration Services (USCIS) announced it will release a new I-9 on Aug. 1, 2023. Employers may continue to use the current version of the I-9; starting Nov. 1, the use of the new I-9 will be required.

The agency made significant changes to the I-9 and instructions, including a checkbox to indicate that an employee's Form I-9 documentation was examined using a new authorized alternative procedure. The USCIS made the following updates to the I-9:

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- Reduced Sections 1 and 2 to a single-sided sheet while maintaining all previous fields
- Moved the preparer/translator certification to a separate standalone supplement
- Moved the reverification/rehire section to a separate standalone supplement
- Edited the employee's attestation field and provided additional clarification to mitigate errors by employees
- Ensured the I-9 can be filled out on tablets and mobile devices
- Removed certain features to ensure the form can be downloaded easily
- Removed the requirement to use "N/A" in certain fields
- Updated the notice regarding avoiding discrimination in the I-9 process
- Revised the list of acceptable documents to include some acceptable receipts and provided additional guidance and links regarding automatic extensions of employment authorization documents
- Added a box eligible employers must check if the employee's I-9 documentation was examined under a new authorized procedure rather than physical examination

In addition, the U.S. Immigration and Customs Enforcement (ICE) issued a final rule that allows it to create a process for employers to implement alternative document examination procedures, such as remote document examination.

ICE Preparing E-Verify Alternative Verification

ICE is preparing to publish a final rule authorizing qualified employers using E-Verify to use alternative verification methods. This alternative verification method will be available to qualified employers that have enrolled in E-Verify for all hiring sites in the U.S. that use the alternative procedure; are in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the U.S.; and continues to be a participant in good standing in E-Verify at any time during which the employer uses the alternative procedure.

The proposed rule notes that the alternative procedure will involve the following:

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:

- 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 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, consistent with applicable regulations, a clear and legible copy of the documentation (front and back if the documentation is two-sided)
- In the event of an 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 for document examination in connection with the employment eligibility verification process

Qualified employers may use the alternative procedure starting on Aug. 1, 2023. Employers not enrolled in E-Verify may do so after becoming a participant in good standing in E-Verify by enrolling and receiving the required training.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Michael Durham at 574-237-1145 or michael.durham@btlaw.com.

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