

Form I-9 Enters a New Season of Life: What Employers Need to Know

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U.S. Citizenship and Immigration Services (USCIS) [announced on July 21, 2023](#), a long-contemplated new version of Form I-9, which will become available for download on August 1, 2023. Additionally, the U.S. Department of Homeland Security (DHS) issued a [final rule](#) that allows certain E-Verify employers to remotely examine Form I-9 documents starting August 1, 2023, provided they follow certain steps.

The announcement comes just in time for the Form I-9's 37th birthday, a form first issued by USCIS's predecessor agency in November 1986. It came into the world with great expectations. Its purpose is to prevent U.S. employers from hiring unauthorized workers and to remove employment as an incentive for unauthorized immigration. It attempts to achieve this end by imposing a heavy burden on U.S. employers, requiring them to screen their employees' immigration statuses to determine eligibility to work. This is no mean feat, as U.S. immigration law creates no less than 26 main categories of temporary (nonimmigrant) visas, a greater variety of permanent (immigrant) visa categories, and a still greater number of miscellaneous categories (such as parolees and asylum applicants). Some categories authorize individuals to work, and others do not. Sorting one category from the other requires an understanding of the various immigration statuses U.S. law creates, as well as a review of an ever-changing list of documents that prove these statuses.

The Form I-9 also has a younger sibling, E-Verify. E-Verify joined the family of government efforts to deter unauthorized employment in 1996. It is an internet-based system administered by USCIS and the Social Security Administration (SSA). It allows employers to confirm the employment eligibility of employees through comparison with agency databases. Employer participation in E-Verify is generally voluntary, although it may be required by certain states and for certain government contracts.

The Form I-9 and E-Verify programs endured together the years of turbulent policy changes occasioned by the COVID-19 pandemic. One major change related to the in-person physical inspection of Form I-9 identity and employment eligibility documents. This change, termed the COVID flexibilities, first implemented on March 20, 2023 by DHS (the umbrella agency that includes USCIS), allowed employers to inspect Form I-9 documents remotely for remote workers. The change was extended through the pandemic, but on May 5, 2023, DHS announced the end to COVID flexibilities, instructing employers to resume in-person physical verification for remote workers on July 31, 2023 and to complete by August 30, 2023 in-person verification for all employees whose documents were inspected remotely.

This history serves as the backdrop for the USCIS announcement on July 21, 2023, to make some long-contemplated changes as the Form I-9 approaches mid-life. The revised Form I-9:

- Reduces Sections 1 and 2 to a single-sided sheet;
- Is designed to be a fillable form on tablets and mobile devices;
- Moves the Section 1 Preparer/Translator Certification area to a separate, standalone supplement that employers can provide to employees when necessary;
- Moves Section 3, Reverification and Rehire, to a standalone supplement that employers can print if or when rehire occurs or reverification is required;
- Revises the Lists of Acceptable Documents page to include some acceptable receipts as well as guidance and links to information on automatic extensions of employment authorization documentation;
- Reduces Form instructions from 15 pages to 8 pages; and
- Includes a checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure rather than via physical examination.

USCIS has taken the occasion of the revised Form I-9 to create a new policy expanding and making permanent remote verification as a feature of I-9 compliance, but only for employers participating in E-Verify. Participating employers in good standing may examine Form I-9 documents of all employees remotely. The terms of this policy specifically exclude employers who do not participate in E-Verify, ending the COVID flexibilities for them and requiring their return to exclusively in-person verification.

Employers' obligations for verifications done under the COVID flexibilities depend. The USCIS announcement on these states, "Employers who were participating in E-Verify and created a case for employees whose documents were examined during COVID-19 flexibilities (March 20, 2020 to July 31, 2023), may choose to use the new alternative procedure starting on August 1, 2023 to satisfy the physical document examination requirement by Aug. 30, 2023. Employers who were not enrolled in E-Verify during the COVID-19 flexibilities must complete an in-person physical examination by Aug. 30, 2023."

The revised Form I-9 (edition date 08/01/23) will be published on uscis.gov on August 1, 2023. All employers may use the new Form I-9 beginning on August 1, 2023, and they must begin using it for new employees after November 1, 2023.

If you have any questions regarding the new version of Form I-9 or I-9 compliance, please contact Attorney [Andrew Mahon](#) or any member of [Barley Snyder's Immigration Practice Group](#).

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