

New Form I-9 and Alternative Inspection Procedure Now in Effect

By: Cody Weyhofen

The Department of Homeland Security (“DHS”) and U.S. Citizenship and Immigration Services (“USCIS”) recently announced changes to Form I-9 and its related document verification procedures. Although these changes will likely streamline the employee-onboarding process, employers will first need to comply with multiple upcoming deadlines and determine whether they qualify for remote verification procedures.

What is Form I-9?

Under federal law, employers must use Form I-9 to verify an employee’s identity and employment authorization. The employee must provide their employer with documentation of their identity and employment authorization, and the employer must examine the documents to determine whether they are genuine and relate to the employee.

New Version of Form I-9

On August 1, 2023, USCIS released a new version of Form I-9. The new version of Form I-9 and related instructions are available [here](#). Employers have until November 1, 2023, to transition to the new version of Form I-9. Among the changes is the addition of a checkbox employers can use to indicate they examined an employee’s documents under the newly authorized E-Verify Procedure.

Document Verification: Traditional Rule and COVID-19 Flexibilities

Traditionally, employers had to physically inspect Form I-9 documents in the presence of the employee. However, on March 20, 2020 (as a result of the COVID-19 pandemic), the DHS announced a temporary procedure allowing employers to remotely inspect documents via video, fax, or email. This temporary procedure was set to expire on July 31, 2023. However, on August 1, 2023, DHS instituted an alternative E-Verify Procedure under which eligible employers may continue to remotely verify Form I-9 documents.

Eligibility for E-Verify Procedure

To be eligible to use E-Verify, employers must be in “good standing.” In other words, the employer must:

1. Be enrolled in E-Verify with respect to all hiring sites that use the alternative procedure;
2. Comply with all requirements of the E-Verify program; and
3. Continue to be in good standing at any time the employer uses the alternative procedure.

COVID-19 Clean Up: Re-Inspection of Documents

Employers must reverify any documents inspected under the COVID-19 flexibilities by August 30, 2023. Employers may do so via physical inspection or the alternative E-Verify procedure described above. An employer may use the alternative E-Verify procedure if:

1. The employer performed a remote examination of an employee’s documents between March 20,

2020, and July 31, 2023;

2. The employer was enrolled in E-Verify at the time they completed the Form I-9 for that employee;
3. The employer created a case in E-Verify for that employee; and
4. The employer is currently enrolled in and continues to participate in E-Verify.

The Seigfreid Bingham team will continue to monitor the latest developments and legal requirements in this area of law. If you have any questions concerning Form I-9, please do not hesitate to contact the firm's Employment Law attorneys for further information concerning compliance for your specific situation.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the author, Cody Weyhofen (CWeyhofen@sb-kc.com) 816.265.4163, or any of the other attorneys in Seigfreid Bingham's Employment Law Group, including: John Vering (jvering@sb-kc.com) 816.265.4109, Mark Opara (mopara@sb-kc.com) 816.265.4140, John Neyens (johnn@sb-kc.com) 816.265.4152, Shannon Cohorst Johnson (sjohnson@sb-kc.com) 816.265.4139, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Christopher Tillery (ctillery@sb-kc.com) 816.265.4157, or your regular contact at Seigfreid Bingham at 816.421.4460.