

Blog Post

Zooming In on the I-9: Five Things Employers Need to Know About Remote Immigration Verification

August 17, 2023

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In July, the United States Department of Homeland Security (DHS) announced its long-awaited modernization of the I-9 Employment Eligibility Verification process. The new rule became effective August 1, 2023, and allows eligible employers to utilize an alternative process for I-9 verification. The alternative process allows continued remote inspection of Form I-9 documents by a live video call interaction. The U.S. Immigration and Customs Enforcement (ICE) will also be releasing a new, shorter, version of the Form I-9 that will allow the employer to indicate whether they used the alternative inspection method. This is arguably the biggest change to the I-9 Verification process since the inception of the program in 1986. As such, employers should reach out to Akerman's immigration attorneys should they have specific questions.

This new rule was announced on the tail-end of DHS's Form I-9 COVID-19 temporary flexibilities, which ended on July 31, 2023; these flexibilities permitted employers to remotely verify certain employees beginning in March of 2020. The new rule provides a permanent avenue for remote I-9 inspection using an alternative process, and it is a welcome change for employer with remote employees. It should be noted that employers must

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still reverify employees who were initially verified using the COVID-19 flexibilities; however, employers now have a new option to do so.

Can All Employers Inspect I-9 Documents Remotely?

This remote inspection process only applies to qualifying employers that are in “good standing” with E-Verify. One requirement of being in good standing is being enrolled in E-Verify at all U.S. hiring sites; another requirement is that new E-Verify employers, as well as users who manage the employer’s E-Verify cases, must complete mandatory E-Verify fraud awareness and anti-discrimination training.

How Can Employers Remotely Verify I-9 Documents?

The DHS has clarified that qualified employers must retain clear and legible copies of all documents presented by the employee seeking to establish identity and employment eligibility for the Form I-9 through the alternate procedures. Prior to the live video call, the employee should send the I-9 documentation to the employer, who may then inspect the documentation to ensure it appears to be genuine. These copies should be easily accessible in the event of an I-9 audit. Next, the employer must conduct a live video interaction with the employee, and the employer should inspect the documentation over the call to ensure accuracy and legitimacy. The employer should then indicate that the alternative procedure is being used on Section 2 of the Form I-9. The three-business day requirement is still in effect, and as such, employers should complete the above-mentioned steps within three (3) business days of hire for new employees. Employers who are unable or unwilling to utilize the new remote inspection method may continue to physically inspect original I-9 documents in-person.

How Does This Tie In With The End Of COVID-19 I-9 Flexibility Measure, Which Ended On July 31, 2023?

Employers will still be required to reverify employees that were initially verified using the temporary flexibility measures implemented by ICE in the wake of the COVID-19 pandemic; employers have until August 30, 2023 to reverify these employees. However, employers can utilize the new alternate method if:

1. The employer was enrolled in E-Verify at the time the employee was hired;
2. The employer created an E-Verify case for the employee in question; and
3. Performed a remote Form I-9 document inspection for the employee under the temporary COVID-19 measures between March 20, 2023 and July 31, 2023.

Does This Apply Only To Employees Hired During The I-9 COVID-19 Flexibility Period?

The new alternate inspection method may be used for all new employees moving forward, as long as the employer is considered a qualifying employer as defined above.

Can Employers Still Use An Authorized Representative For The Alternate Procedure ?

Based on the language in the Federal Register, authorized representatives (including third-party vendors) may use the alternate process in lieu of physical inspection. If you are using a third-party, it may be beneficial to require signed attestations. Even with attestations, it is important to understand that employers are still liable for the I-9 violations of their authorized representatives.

For specific guidance regarding the new I-9 process, please contact your Akerman immigration team. Our

team has extensive experience in a wide range of immigration matters, including I-9 guidance, I-9 audits, and the implementation of I-9 compliance programs and procedures.

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