

## New Form I-9 and Policy Changes

On Tuesday, July 25, 2023, U.S. Citizenship and Immigration Services (USCIS) will be issuing a new version of Form I-9, Employment Eligibility Verification. Form I-9 with a version date of (Rev. 08/01/23) will be available for use beginning August 1, 2023. The prior version of Form I-9 (Rev. 10/21/19) continues to be effective through October 31, 2023. Starting on August 1, 2023, employers may download the new Form I-9 (Rev. 08/01/23) from the USCIS website at [www.uscis.gov/i-9](http://www.uscis.gov/i-9). Beginning November 1, 2023, employers who fail to use Form I-9 (Rev. 08/01/23) may be subject to all applicable penalties.

The new Form I-9 contains two sections and two supplements, which rearranges the previous format of the current Form I-9. The revisions were designed to help streamline these materials and reduce the employer and employee burden associated with the form. The significant changes include:

- Moved the Section 1 Preparer/Translator Certification area to a separate, standalone supplement (Supplement A) that employers can provide to employees when necessary. Employers may attach additional supplement sheets as needed.
- Moved the Section 3 Reverification and Rehire area to a separate, standalone supplement (Supplement B) that employers can print if or when rehire occurs or reverification is required. Employers may attach additional supplement sheets as necessary.
- Ensured the form can be filled out on tablets and mobile devices.
- Revised 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.
- Added a box that eligible employers must check if the employee's Form I-9 documentation was examined under a DHS-authorized alternative procedure rather than via physical examination.

Additionally, the Department of Homeland Security (DHS) has issued a new rule regarding the virtual inspection of Form I-9. The alternative procedure is available to employers beginning on **August 1, 2023**. The new rule has created a framework under which employers have an optional alternative to the regulatory in-person physical document examination of Form I-9 documents for remote employees. The alternative procedures are only available to qualified employers, specifically those employers who are participants in good standing in the E-Verify program. A participant in good standing in E-Verify is an employer that is:

1. Enrolled in E-Verify with respect to all hiring sites in the United States that use the alternative procedure;
2. Remains 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 United States; and
3. Continues to be a participant in good standing in E-Verify at any time during which the employer uses the alternative procedure.

If a qualified employer chooses to offer the alternative procedure to new employees at an E-Verify hiring site, that employer must do so consistently for all employees at that site. However, a qualified employer may choose to offer the alternative procedure for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity, so long as the employer does not adopt such a practice for a discriminatory purpose or treat employees differently based on their citizenship, immigration status, or national origin.

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



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### Related Practice Areas

- Immigration Policy & Strategy

chooses to use the alternative procedure must:

1. 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;
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 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;
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 for document examination in connection with the employment eligibility verification process.

### Cozen O'Connor Analysis

The current COVID-19 flexibilities for Form I-9 inspections will end on July 31, 2023, and employers must perform physical inspections by August 31, 2023. Employers who were **not** enrolled in E-Verify at the time they initially performed a remote examination of an employee's documents (i.e., within three business days of the employee's first day of employment) under the COVID-19 flexibilities between March 20, 2020, and July 31, 2023, are required to **still** physically examine the employee's Form I-9 documents in the employee's physical presence no later than August 31, 2023.

At this time, employers should begin preparing to use the new Form I-9 for future hires. With the changes to the form, employers should refer to the Form I-9 Instructions page provided by USCIS for clarification on the revised sections. In addition, employers should consider taking advantage of the alternative Form I-9 inspection procedures via E-Verify enrollment. With the rise of remote workforces, employers should carefully examine the options for either conducting physical inspections or qualifying to take advantage of these alternative Form I-9 inspection procedures.

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**If you have any questions about the emerging policies surrounding Form I-9, please reach out to a member of our team.**