

Employment Alert

The New I-9: Compliance with U.S. Work Authorization in the Post-COVID World

September 2023

In August 2023, U.S. Citizenship and Immigration Services (USCIS) released a revised version of the Form I-9. Employers should start implementing this new Form I-9 now. Starting November 1, 2023, employers must use the new Form I-9, accessible [here](#), to verify the U.S. employment authorization of new employees.

Key items to note:

- The temporary flexibility to remotely examine employees' authorization documents (i.e. their U.S. passports or U.S. Permanent Resident Cards or U.S. Driver's Licenses and Social Security Cards without a DHS notation, or other acceptable documents) is OVER.
- Authorization documents must once again be examined in-person within three business days after the first day of employment (i.e. the first day of work in exchange for wages or other remuneration) with a major exception for employers enrolled and in good standing with E-Verify.
- Employers that are enrolled and in good standing with E-Verify have the option to remotely examine employees' authorization documents following a prescribed alternative procedure. The employer must:
 - ❖ be enrolled and in good standing with E-Verify;
 - ❖ examine and retain copies of all authorization documents;
 - ❖ conduct a live video interaction with employee to remotely examine the actual authorization document(s); and
 - ❖ create an E-Verify case if the employee is a new hire.

- The new Form I-9 has a checkbox for E-Verify employers to indicate they examined the authorization documentation remotely under the above-noted alternative procedure.
- E-Verify employers may choose to offer this alternative procedure for remote hires only, while applying the physical in-person procedure to all employees who work onsite or in a hybrid capacity, so long as the employer does not discriminate or treat employees differently based on their citizenship, immigration status or national origin.
- Once enrolled in E-Verify, employers must create cases for all newly hired employees, regardless of whether the employer uses the alternative procedure for remote examination of authorization documents or physical in-person examination of authorization documents.

Many employers welcome the new I-9, as it acknowledges the evolution and modernization of remote hiring practices, given that employees are often hired in remote locations. Providing an exception to performing in-person inspections of I-9 authorization documents for employers enrolled and in good standing with E-Verify is helpful for the increasing number of companies with remote workforces.

CONTACT

For further information on the I-9 form or compliance with the U.S. immigration laws, please contact [Allison Ahern Fillo](#) in our [Immigration Law Practice](#).