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DHS Announces New Form I-9 and Remote Inspection Option Designed to Modernize I-9 Process for Employers

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On July 21, 2023, the United States Department of Homeland Security (“DHS”), the parent agency of the United States Citizenship and Immigration Services (“USCIS”), announced that a new version of the Form I-9 will be published on August 1, 2023. Among other changes, the new form will include a place for employers to indicate that they inspected an employee’s identity and authorization documents over live video. Further, on July 25, 2023, DHS published a final rule explaining the new remote inspection option available for some employers.

THE NEW FORM I-9

All employers must use the Form I-9 to verify the identity and employment authorization of their employees. USCIS notes that its new form includes improvements that are designed to make the I-9 process easier for both employers and employees.

Notably, the revised Form I-9:

- Condenses 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.

Practice Tip: Employers may start using the new version of the I-9 form beginning August 1, 2023, but also are permitted to keep using the 2019 version of the form through October 31, 2023. Beginning November 1, 2023, only the new Form I-9 dated “08/01/2023” may be used. The version date can be found at the lower left corner of the form.

REMOTE INSPECTION OF I-9 DOCUMENTS

In addition to the new form, DHS issued a Final Rule that modernizes employment eligibility verification by allowing employers *participating in E-Verify* to remotely examine Form I-9 documents starting August 1, 2023. This is welcome news for many employers, as the DHS’ temporary flexibility policy allowing for the remote inspection of documents is set to expire at the end of July. As employers may recall, this temporary flexibility began during the COVID-19 pandemic. On May 5, 2023, DHS stated that by August 30, 2023, employers would be required to physically examine documents of the employees hired on or after March 20, 2020, whose I-9 documents had been inspected remotely through the temporary flexibilities. *This August 30 deadline for physical inspection is still in place for employers that do not participate in E-Verify.* However, employers that were enrolled in E-Verify during the COVID-19 flexibilities can use the new remote process to satisfy the requirement of verifying Form I-9 documentation that had previously been reviewed remotely by August 30.

Note: E-Verify is a program that works well for some employers but is not right for every employer. If you have questions about whether E-Verify is a good fit for your organization, please contact your Bowditch employment counsel and we can help you with that decision.

As of August 1, employers must take the following steps to conduct the remote examination of Form I-9 documents:

- Enroll in E-Verify (if already enrolled, the employer must be in good standing);
- Obtain and examine copies of the employee’s identity and employment authorization documents;
- Remotely examine the employee’s identity and employment authorization documents through a live video interaction with the employee;
- Annotate the Form I-9 (on the new form, employers must select the checkbox indicating that they examined the Form I-9 documentation remotely);
- Retain copies of all remotely examined documents with the employee’s Form I-9; and
- Create a case in E-Verify.

PRACTICE TIP

Employers that utilize the remote verification process should do so consistently for all employees at a worksite. That said, employers may opt to use the remote procedure for employees who work remotely while maintaining in-person document inspection for all on-site and hybrid employees. This practice should be consistent throughout all eligible worksites.

If you have any questions related to this alert, please contact your attorney in Bowditch’s Employment & Labor practice group.

