



update: dhs announces new alternative procedure for e-verify employers and new form i-9 requirements

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MSK Client Alert

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Today the U.S. Department of Homeland Security (DHS) announced a final rule in the Federal Register that recognizes the end of temporary COVID-19 flexibilities for completion of Form I-9 for employment verification as of July 31, 2023.

The rule also provides DHS with the authority to authorize optional alternatives for employers to examine Form I-9 support documentation. Employers who were participating in E-Verify and created a case for employees whose documents were examined during COVID-19 flexibilities (March 20, 2020 to July 31, 2023) may choose to use the new alternative procedure starting on August 1, 2023. This makes compliance for E-verify employers much easier since they may continue to rely on remote presentation of documents and in person meetings are not required.

Rather than examining an employee's original identity and employment authorization documents in person, employers who participate in E-Verify and are in good standing will have the option to conduct verification electronically and with a live video call interaction.

However, employers who were not enrolled in E-Verify during the COVID-19 flexibilities period must now complete an in-person physical examination of original documents, and this process must be completed by August 30, 2023 in order for employers to be in compliance

Additionally, U.S. Citizenship and Immigration Services (USCIS) will publish a revised version of Form I-9 on August 1, 2023. Employers may use the current Form I-9 (edition date 10/21/19) through October 31, 2023. Starting November 1, 2023, all employers must use the new Form I-9. Among the improvements to the new Form I-9 is a checkbox employers enrolled in E-Verify can use to

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indicate they remotely examined identity and employment authorization documents under the alternative procedure.

MSK Analysis: Employers must perform physical inspections of Form I-9 documentation that was inspected remotely under the temporary COVID-19 flexibilities by August 30, 2023. Employers who do not participate in E-Verify have until August 30, 2023, as previously announced, to perform all required physical examination of identity and employment authorization documents. However, if employers are participating in E-Verify, then remote completion of Form I-9 and electronic review of documents is permissible as per the new alternative procedure. If employers are not enrolled in E-Verify, they may wish to consider enrolling by July 31, 2023 to take advantage of the new alternative procedure. Additionally, after November 1, 2023, all employers must use the new Form I-9. As a reminder, employers can only accept certain employment identity and employment authorization from the Form I-9 Acceptable Documents lists. Please contact your MSK counsel as soon as possible regarding any questions on how to complete in-person document review, E-Verify, and Form I-9 compliance.