

THE EMPLOYER'S ADVISORY

A PERIODICAL HIGHLIGHTING
CURRENT EMPLOYMENT-LAW ISSUES

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A NEW FORM I-9 IS HERE!! A NEW FORM I-9 IS HERE!!

Recently, US Citizenship and Immigration Services (USCIS) published a new Form I-9 for employers to use to verify the identity and employment authorization for every employee. The new Form I-9 is available here: www.uscis.gov/i-9. To ensure you are using the correct Form I-9, look for "Edition 08/01/23" in the bottom-left corner of the document.

"Technically," employers were to begin using the new Form I-9 on August 1, 2023. But have no fear, USCIS will accept the prior version of Form I-9 (Rev. 10/21/19) through October 31, 2023. Employers do not need to complete a new Form I-9 for current employees who already have completed a Form I-9 unless a reverification of the form is needed after October 31, 2023. In fact, unnecessary verification may violate the Immigration and Nationality Act's anti-discrimination provision (8 USC 1324b).

USCIS's Notice regarding the new Form I-9 is available here: www.federalregister.gov/d/2023-15667). Some of the changes in the new Form I-9 include:

- Reduced Sections 1 and 2 to a single-sided sheet. No previous fields were removed. Rather, multiple fields were merged into fewer fields when possible.
- 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/when rehire occurs or reverification is required. Employers may attach additional supplement sheets as necessary.
- Removed use of the phrases "alien authorized to work" in Section 1 and replaced it with "noncitizen authorized to work" as well as clarified the difference between "noncitizen national" and "noncitizen authorized to work."
- Ensured the form can be filled out on tablets and mobile devices.
- Updated the notice at the top of the Form I-9 that explains how to avoid discrimination in the Form I-9 process.
- 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.

USCIS also updated the following in the Form I-9 instructions:

- Added definitions of key actors in the Form I-9 process.
- Streamlined the steps each actor takes to complete their section of the form.
- Added instructions for use of the new checkbox for employers who choose to examine Form I-9 documentation under an alternative procedure.
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- Removed the abbreviations charts and relocated them to the M-274, Handbook for Employers: Guidance for Completing Form I-9 (available here: www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274).

Employers should follow the instructions on the new Form I-9 and review the Handbook for Employers (link above) to ensure compliance.

The Department of Homeland Security also announced that it will continue to allow employers using E-Verify to examine employees' Form I-9 documentation remotely in lieu of the physical-examination requirement. Remote examination was originally allowed during the COVID-19 pandemic (effective from March 20, 2020, to July 31, 2023). As of August 1, 2023, eligible employers may examine Form I-9 documents by conducting a live video interaction with the employee; what DHS coined the "alternative procedure." This process is particularly useful when hiring remote employees.

If an employer utilizes the "alternative procedure" using the old Form I-9 (accepted through October 31, 2023), the employer must indicate that it utilized that procedure by writing "alternative procedure" in the Additional Information field in Section 2. USCIS simplified this process in the new Form I-9 by adding a box to check underneath the Additional Information field with the instruction, "Check here if you used an alternative procedure authorized by DHS to examine documents."

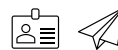
Employers interested in enrolling in E-Verify may do so at www.e-verify.gov. To utilize the alternative procedure, employers must complete the following steps: (1) enroll in E-Verify; (2) remotely examine an employee's Form I-9 documents; (3) indicate on Form I-9 that the alternative procedure was used; (4) retain copies of the employee's documents; and (5) create a case in E-Verify. Through E-Verify, employers have access to trainings, tutorials, and webinars to help them navigate the process, identify fraud, and avoid discrimination.

In sum, now is the time to start using the new Form I-9 and consider whether to enroll in E-Verify. If you have any questions regarding these new procedures Bechtel & Santo is here to help. Please contact us for assistance.

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