Engage PEO FAQ

Form I-9

Timeline, Inspection of Documents, New Optional Alternative Procedure for Qualified Employers, Retaining the I-9, and Useful Links

Form I-9 and Timeline [1]

- Employers must complete a Form I-9 for each new employee hired after November 6, 1986.
- **A new Form I-9 was released on August 1, 2023. Employers may continue using the 2019 Form I-9 through October 31, 2023. Beginning November 1, 2023, employers are required to use the new form.**
- All pages of instructions and Lists of Available Documents must be available, either in print or electronically, to all employees completing the Form I-9.
    - Note: Employers may provide the Spanish Form I-9 and instructions for guidance purposes, if helpful. However, the Form-I-9 must be completed in English. Completion of the Spanish Form I-9 is only permissible in Puerto Rico.
- Employees must complete Section 1 of the Form I-9, no later than the first day of employment. Section 1 should never be completed before an employee has accepted a job offer.
- The employer must complete Section 2 of Form I-9 within 3 business days of the employee's first day of employment.
- Please refer to the links below for further guidance.

Inspection of Documents

- Within 3 business days of starting work, the employee must present to the employer documentation showing identity and authorization to work.
- The employer must allow the employee to choose which documents to present from the Lists of Acceptable Documents and may not specify which documents the employee must provide.
    - Both I-9 Central and the Employer handbook hyperlinked below have samples of appropriate documents
- With limited exceptions (*see* New Alternative Procedure below) the requirement has been and continues to be that **employers must physically inspect employee documents in the presence of the employee.**

[1] This FAQ page is intended to assist clients by highlighting some of the key aspects of the Form I-9 processes and requirements. It is current as of August 4, 2023. The links provided offer real time updates directly from USCIS and should any conflict in this informational guide conflict with USCIS, the client should defer to USCIS.

- Copies of documents are not acceptable, except for a certified copy of a birth certificate.
- The person who physically inspects the employee's documents on behalf of the employer is the same person who must complete and sign Section 2 of the Form I-9.
- An employer may designate an authorized representative to inspect documents and complete Section 2 of the Form I-9. The Form I-9 Instructions state that "an authorized representative can be any person you designate to complete and sign Form I-9 on your behalf."
- The employer remains liable for violations or errors on the Form I-9 regardless of whether an agent was designated to act on the employer's behalf.
- **For purposes of complying with the May 5, 2023, DHS directive (to complete physical inspection of documents by August 30, 2023 for employees whose documents were remotely inspected due to COVID temporary flexibilities),** employers should add notations to the original Form I-9 in the Additional Information section, or complete a new Section 2, add notations, and maintain it with the original Form I-9 that was completed upon hire.

New Optional Alternative Procedure for Qualified Employers Effective August 1, 2023

- On July 25, 2023, the Department of Homeland Security published a notice, *Optional Alternatives to the Physical Document Examination Associated with Employment Eligibility Verification (Form I-9)*.
- The new alternative procedure allows for remote inspection of Form I-9 documents for qualified employers only.

Qualified Employer

- Qualified employers are employers who are participants in good standing in the E-Verify program.
- A participant is in good standing in E-Verify if the employer has enrolled in E-Verify with respect to all hiring sites that use the alternative procedure and is in compliance with all the requirements of the E-Verify program. An employer must continue to participate in good standing at any time the employer uses the alternative procedure.
- Qualified employers are not required to utilize the alternative procedure but have the option to do so.

Steps for Completing the Alternative Procedure

- Qualified employers must examine documents (both front and back if the document is two sided) transmitted by the employee to establish identity and authorization to work.
- Qualified employers must make and maintain clear and legible copies for all employees whose documents are reviewed remotely.
- After reviewing the transmitted documents, the qualified employer must also conduct a live video interaction with the individual presenting the documents, to ensure that the documents look

reasonably genuine. During the video interaction, the employee must present the same documents that they already provided electronically.

- The qualified employer should notate use of the alternative procedure on the Form I-9.
    - New Form I-9: Select the "Alternative Procedure" box on the new Form I-9.
    - 2019 Form 1-9: For employers continuing to use the 2019 Form I-9 (only permitted through October 31, 2023), add the notation "alternative procedure" in the Additional Information section.

Additional Requirements and Considerations

- Once enrolled in E-Verify an employer is required to create an E-Verify case for all newly hired employees at each hiring site that is enrolled in E-Verify, whether or not the alternative procedure is used.
- If an employee is unable or unwilling to submit documentation using the alternative procedure, the qualified employer must allow the employee to submit documents in person for physical inspection.
- If a qualified employer offers the alternative procedure to employees at a hiring site, they need to offer it to all employees at that hiring site. Qualified employers may implement a policy allowing the alternative procedure only for remote employees, but they should implement the policy consistently and in a non-discriminatory manner.
- Qualified employers cannot use the alternative procedure for employees hired before the August 1, 2023 (except for the limited circumstances described below).
- Employers who enroll in E-Verify or who currently manage and create cases in E-Verify must complete a free E-Verify tutorial which includes fraud awareness and anti-discrimination training.

Impact on COVID-19 Temporary Policy and August 30, 2023 Deadline

- On May 5, 2023, DHS issued a directive that employers were required to complete physical inspection of documents by August 30, 2023, for employees whose documents were remotely inspected due to COVID temporary flexibilities.
- **The directive and deadline are still in place.**
- The new alternative procedure may be used in lieu of the physical examination requirement for employees who were remotely verified during COVID 19 only if ALL of the following requirements are met:
    - The employer was enrolled in E-Verify at the time they performed a remote examination of the employee's Form I-9 documentation using COVID 19 flexibilities;
    - The employer created an E-Verify case for that employee; and
    - The employer performed the remote inspection between March 20, 2020, and July 31, 2023.

- Note that the alternative procedure has its own steps and requirements. It requires employers to take distinct actions above and beyond the initial remote inspection performed during COVID-19 flexibilities.
- Therefore, if the above requirements are met and an employer chooses to use the alternative procedure in lieu of physical inspection, the employer must follow the steps outlined above to properly complete the alternative procedure (i.e. review documents front and back, make and maintain clear and legible copies, conduct a live video interaction, note on the Form I-9 that the alternative procedure was used and the date documents were reviewed).

Retaining the I-9

- Employers must maintain their own copies (paper or electronic) of the Form I-9 for each employee.
- Form I-9s should be maintained separate from employee personnel files.
    - Engage recommends three folders:
        - Active employees who do not need reverification,
        - Active employees who do need reverification, and
        - Terminated employees (for up to 3 years after hire or 1 year after termination, whichever is later).

Useful links

Form I-9

Form I-9 Instructions

I-9 Central

Engage Client Alert: DHS Ends Form I-9 Flexibility for Remote Workers

M-274 Handbook for Employers

For clients interested in how Engage can assist with E-Verify please reach out to your account manager. Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.