Engage PEO FAQ

Form I-9

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 will be 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 during COVID, the requirement has been and continues to be that **employers must physically inspect employee documents in the presence of the employee.**
- Copies of documents are not acceptable, except for a certified copy of a birth certificate.

[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 July 26, 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.

- 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 with the original Form I-9 that was completed upon hire.**

New Alternative Procedures Effective August 1, 2023 (*E-Verify*)

- 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 ONLY for employers who are participants, in good standing, in the E-Verify program.**
- Employers who are eligible and choose the alternative procedure must examine documents (both front and back if the document is two sided) transmitted by the employee to establish identity and authorization to work.
- Employers must make and maintain clear and legible copies for all employees whose documents are reviewed remotely.
- After reviewing the transmitted documents, the 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.
- Employers who are eligible and who choose the alternative procedure must select the "Alternative Procedure" box on the new Form I-9. If an employer continues to use the 2019 Form I-9 they should note "alternative procedure" in the Additional Information section.
- Once enrolled in E-Verify the 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.
- The use of the alternative procedure is entirely optional for qualified employers.
- If an employee is unable or unwilling to submit documentation using the alternative procedure, the employer must allow the employee to submit documents in person for physical inspection.
- If an employer offers the alternative procedure to employees at a hiring site, they need to offer it to all employees at that hiring site. 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.

- Employers cannot use the alternative procedure for employees hired before the effective date of the DHS notice (August 1, 2023).
- **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**.

Alternative Procedures to Meet Requirements for End of COVID 19 Flexibilities

- Employers may use the alternative procedures to satisfy 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.
- An employer using the alternative procedure, must follow the procedures outlined above.

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,
  - Terminated employees for up to 3 years after hire or 1 year after termination, whichever is later.

Useful links

Form I-9 * This form can be used until 10/31/2023. Once the new form is released, we will add a link.

Form I-9 Instructions * These instructions correspond with the 2019 Form I-9. Once the new instructions are released, we will add a link here.

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.