

FORM I-9: A WHIRLWIND OF CHANGES AND MORE ON THE WAY?

As per an October 11, 2022 announcement, the U.S. Department of Homeland Security (DHS) and Immigration and Customs enforcement (ICE) has officially extended Form I-9 flexibilities, particularly for remote hire instances. Those relaxed procedures now **expire on July 31, 2023**. For employers, it is business as usual and no need to rush to get employees' documents inspected in person at the beginning of November. The government does encourage employers to begin that process in good faith and with discretion.

October 12, 2022 – DHS ALERT

Continue to use the 2019 version of the I-9 beyond 10/31/2022. USCIS E-Verify released an 'Employer Alert: Continue to Use Current Form I-9.' The alert states that employers should continue using the Form I-9, Employment Eligibility Verification, after its expiration date of Oct. 31, 2022 until further notice. DHS will publish a Federal Register notice to announce the new version of the Form I-9 once it becomes available.

Stay tuned on the remote hires issue and how employers must maintain records and physically inspect documents from employees who were hired under the relaxed guidelines.

You and the millions of other businesses across the United States have been through a whirlwind of change for the last few years with a multitude of Form I-9 procedural adaptations due to the pandemic, government processing delays, and labor shortages.

Now, we are quickly approaching another potential and significant change in the I-9, in an attempt by the Department

of Homeland Security (DHS) to simplify the form and its instructions.

HERE'S THE DEAL:

Government simplification is always a welcome thing to most businesses. The two-page I-9 has been relatively the same for a decade, but it is anticipated that the revised I-9 will revert to its original one-page format with Sections 1 and 2 and the recording of reverification instances in a supplemental area, as needed. The same applies to any preparer and/or translator who will be required to complete an additional supplement section of the form.

TAKE NOTE:

The current Form I-9 has an expiration date of 10/31/2022. The government has extended the use of expired versions of the I-9 in the past so there is no guarantee that DHS will require the immediate use of the next iteration on November 1st. Additionally, we will have to wait for DHS to determine what flexibilities are allowed for employers and the preparation of I-9s for remote employees.

THE BACKSTORY:

Earlier this year, the government solicited public input and comments regarding remote examination of acceptable documents to establish identity and employment eligibility. With the current DHS guidance, it is likely that employers who engaged in remote hiring of individuals will be required to verify the documentation in-person and within three days of October 31, 2022. If that turns out to be the mandate, employers will need to complete that exercise by November 3rd.

As a reminder, during the pandemic, DHS allowed employers to examine Section 2 documents via video link, fax, or email, and to obtain, inspect, and retain copies within three days of remotely hiring employees. At that time, DHS stipulated that at the end of the national emergency, employers will have to revert to the requirement of physically examining documents in-person at the workplace. Whether or not the end of this month will be another watershed moment in the long lineage of Forms I-9 and accompanying procedures remains to be seen.

THE KEY TAKEAWAY:

Of utmost importance is for every employer to be absolutely certain that they adhere to the multiple, complicated requirements regarding I-9 timeliness, technical completion, and acceptance of proper documentation from employees.

Over the last few years, we have seen a myriad of errors that constitute substantive violations by employers due to the special flexibilities and requirements related to the COVID-19 pandemic. Now more than ever, teams tasked with the responsibility of properly completing and maintaining I-9s must be laser-focused on ever-changing government policies and procedures. Proper recording of work authorization extensions and reverifications of subsequently issued DHS documents are critically important. The increase in the number of Employment Authorization Documents (EAD) presented by employees is evident, particularly for those seeking asylum in the U.S. An I-9 error for any employees

requiring reverification could lead to an Immigration and Customs Enforcement (ICE) charge of continuing to employ an unauthorized individual which always carries a hefty monetary penalty per instance.

Additionally, straying from the mandated consistent practices associated with recruitment, hiring, and the I-9 has led to a steep increase in Department of Justice (DOJ) Immigrant and Employee Rights (IER) anti-discriminatory findings against multiple employers over the last two years. Most of those violations could have been prevented with bolstered training and general I-9 “know how.”

WHAT'S NEXT:

Our team of I-9 compliance experts can assist your business in navigating the constantly changing rules and regulations that impact your I-9 compliance program. We stay up to date on the latest nuances of preparation and remediation processes and procedures through active and on-going engagements with small, medium, and large sized companies across the entire country. Our team regularly provides very informative and interactive training to personnel charged with I-9 and E-Verify responsibilities. Form I-9 risk is a serious issue with multiple potential downsides to all U.S. businesses. We are here to help you minimize that risk across the immigration compliance spectrum.



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John Shofi has more than 20 years of government experience in key leadership roles with the U.S. Department of Homeland Security (DHS), in-depth experience at Immigration and Customs Enforcement (ICE), and a widespread knowledge of DHS operations. He provides invaluable insight in matters involving investigative and compliance issues.