

SUMMER DOLDRUMS? NOT FOR HUMAN RESOURCES TEAMS AND I-9S!

I don't think the word "doldrums" is used very much anymore, but I do remember it vividly from when I was a child. It was predominantly used in connection to the lazy hazy days of summer when things were hotter than heck and humidity was always higher than anyone wanted. When schools always started back up after Labor Day, August was considered the summer doldrums, especially when you knew it was inevitable that vacation time was soon coming to an end, ugh!

The summer and August of 2023 for U.S. employers and their human resources/people operations teams will NOT be considered the doldrums. Those companies who engaged in remote hiring for the last few years (<https://www.uscis.gov/i-9-central/form-i-9-related-news/reminder-dhs-ends-form-i-9-requirement-flexibility>) have been very busy making sure to physically examine documents presented remotely. The Department of Homeland Security (DHS) deadline to get that fully completed is August 30th based on the official end of COVID-19 temporary I-9 flexibilities on July 31st. On top of that requirement, at the end of last week, DHS sprung a whole new I-9 on all of us and announced the establishment of new flexibilities for the examination of documentation presented on August 1st and later

(<https://www.uscis.gov/i-9-central/form-i-9-related-news/new-form-i-9-notice-published-allowing-e-verify-employers-to-remotely-examine-form-i-9-documents>).

Let's break down the two announcements in simple, straightforward terms to better understand what employers need to know.

1. If you hired employees remotely and completed the I-9 processes, including the acceptance of documentation to fulfill the identity and employment eligibility requirements, make sure you examine those documents IN PERSON on or before August 30, 2023.
 1. One important exception – if you hired employees remotely during the COVID-19 flexibility period AND were enrolled in E-Verify, DHS is allowing you to examine documents for those

specific employees via live video. If you were not enrolled in E-Verify at the time of hire, you will have to examine documentation in-person.

2. If you would like to continue hiring employees remotely as of August 1, 2023, you will have to be or become a participant in the E-Verify voluntary program and you must have live video capability to examine each employee's documentation.
3. The Form I-9 in its current version can be used until October 31, 2023, and no later.
4. You must use the new version of the I-9 as of November 1, 2023. You are permitted to begin using the new version on August 1, 2023, and no earlier.
 1. The new form has reverted to its original one-page version but do not let that deceive you. The I-9 requirements, including the need to ensure for continuous work authorization of all employees through extensions and reverifications, are still in place.
 2. Many of these procedures are complicated and can trip-up the best of U.S. employers. We've seen it over and over again with many seasoned I-9 teams.
5. If you decide to move forward with the remote completion of I-9s via video and are an E-Verify participant employer, you must notate each instance in the Additional Information box of Section 2 of the I-9.
 1. If you use the current version of the I-9, you must enter "Alternative Procedure" in the box.
 2. If you use the 2023 version of the I-9, you must check the box within the Additional Information box.
6. This one is really important! If you move forward with remote hiring (with E-Verify participation), you must remember to retain copies of all documents presented by the remotely hired employee regardless of the type of documentation.
 1. What I mean here is that normally under E-Verify requirements, you must retain copies of solely List A documents, including U.S. passports and passport cards, employment authorization documents (EAD), and permanent resident cards (PRC). If you

delve into the new flexibility of remote hiring as of August 1st, you must retain copies of all acceptable documentation (including List B and C documents) with the I-9 record.

2. Equally of importance – if your company I-9 policy stipulates that you do not retain copies of documents (except for E-Verify required List A instances), you can continue with that practice as long as it is an in-person hiring and examination of the documentation presented by the employee.

1. Bottom line – make sure you are consistent with your company policies regarding document copy retention and I-9s. Either you keep all copies of documents presented or you do not. Refer to the useful matrix below for the addition of the E-Verify and remote hiring as of August 1, 2023:

Company Policy	+ E-Verify Participation	+ Remote Hiring Practices
Copy NO documents and only retain the I-9 record.	Required to retain and upload all List A document copies to E-Verify	In-Person hiring: ONLY copy List A documents for E-Verify compliance. Remote hires: Copy and retain ALL documents presented.
Copy all documents and retain with the I-9 record.	Required to retain and upload all List A document copies to E-Verify	Copy ALL documents presented by employees.

Now that your brain is trying to wrap itself around these I-9 riddles and timelines, you need to fully understand the ramifications of not completing all the government requirements thoroughly and correctly. Please understand that this is not solely an ICE (Immigration and Customs Enforcement) audit risk which can be potentially costly enough. The Department of Justice (DOJ) Immigrant and Employee Rights Section has been very active with its investigations connected to the anti-discrimination provisions of the Immigration and Nationality Act. Inconsistent and inappropriate hiring practices and I-9 processes have landed many U.S. companies on DOJ press releases, regardless of company size and/or penalty. I'm sure you will agree that brand reputation is one of your finest assets and a DOJ press release does not enhance that attribute at all. The U.S. Department of Labor and U.S. Citizenship and Immigration Services are also active with workforce and I-9 audits in conjunction with illegal employment of minors' investigations and E-Verify monitoring and desk audits. Together, all these audits can result in significant fines, workforce disruptions and

negative media coverage.

Guidepost is all about simple straightforward solutions and risk mitigation gameplans. We get to the point promptly and efficiently with I-9 experts and seasoned professionals. We have assisted the smallest of sole-ownership employers to the largest of the world's corporations – every entity assumes immigration and hiring practice risk. Guidepost will minimize your risk and exposure with many options and strategic alternatives tailored to your needs. We partner with internal and/or external legal teams to quickly assess risk and to attack vulnerabilities cohesively.

The I-9 form and processes, as simple as they may appear, are actually quite complex and cumbersome. Don't ignore what you don't know – give us an opportunity to provide you with a concise and realistic assessment of your hiring and immigration practices and records. An independent review by Guidepost experts will give you the reassurance that this risk area is understood and fully under control.



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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.