

# Employment and Labor Insight: DHS Updates Procedures for Virtual I-9 Inspections; Introduces Streamlined Form

Insights

August 17, 2023

As we previously [reported](#), the temporary pandemic-era flexibilities that had allowed employers to remotely verify and inspect new employees' Forms I-9 and supporting documents officially ended July 31, 2023. Employers now have until **August 30, 2023**, to complete all mandatory inspections of employee Forms I-9 and supporting documents.

Fortunately, the U.S. Department of Homeland Security (DHS) has taken steps to ease the overall Form I-9 completion process.

**First**, on August 1, 2023, DHS published a simpler, streamlined version of the Form I-9. The updated form can be accessed [here](#). A [summary of changes](#) to Form I-9 and instructions is also available online. Employers can continue using the previous Form I-9 (rev. date 10/21/19) through October 31, 2023, but must transition to exclusive use of the new form by **November 1, 2023**.

**Second**, in an effort to modernize the Form I-9 program and leverage insights gained during the COVID-19 pandemic, DHS has [authorized](#) an **alternative Form I-9 inspection procedure** that permits "qualified" employers to virtually examine their employees' Form I-9 documents. Further, certain "qualified" employers may use these procedures to conduct re-inspections of Form I-9 and supporting documents for employees hired while verification flexibilities were in effect between March 20, 2020 and July 31, 2023 and whose Form I-9 documents were only inspected virtually.

## The Alternative Virtual Procedures

Under DHS's [new rules](#), an employer is deemed “qualified” to use an alternative virtual inspection procedure going forward if the employer (1) is enrolled in E-Verify with respect to any job site where it wants to use the virtual inspection procedure; (2) is in good standing with E-Verify; and (3) complies with all E-Verify requirements. Employers who have not used virtual inspection procedures in the past may qualify to use them simply by meeting these requirements. (Interested employers can enroll with E-Verify [here](#).)

The alternative procedure to virtually inspect a new employee's Form I-9 and supporting documents must take place within the first three (3) days of employment and consists of the following steps:

1. Direct the employee to send a copy of their Form I-9 documents;
2. Examine the copies of the employee's documents (front and back) to confirm they appear genuine;
3. Conduct a live video interaction with the employee while they present the same Form I-9 document(s) to further confirm the genuineness of those documents and that they relate to that employee (e.g., that the documents correctly bear the employee's name, etc.);
4. Indicate on the Form I-9 that the alternative procedure was used;
5. Keep clear and legible copies (front and back) of the employee's Form I-9 documents; and
6. Create an E-Verify case for each new employee.

Qualified employers can use this virtual inspection procedure for all new employees *so long as* the employer does so consistently for any employees at the same job site. Alternatively, qualified employers can use the virtual inspection procedure for remote hires only, while continuing to conduct physical inspections for all employees who work onsite or in a hybrid capacity.

Employers that are not deemed “qualified” must conduct in-person physical inspections of all Form I-9 documents.

**Certain “qualified” employers can also use the alternative virtual procedure when re-inspecting Form I-9 and supporting documents originally inspected virtually between March 20, 2020, and July 31, 2023.**

Employers have until August 30, 2023, to re-inspect the Form I-9 and supporting documents for employees whose documents were virtually inspected while the verification flexibilities were in effect between March 20, 2020 and July 31, 2023. However, under the new DHS rule, certain “qualified” employers may perform this re-inspection virtually.

To be eligible for the virtual re-inspection procedure, an employer must have:

1. Conducted remote examination of an employee’s documents between March 20, 2020, and July 31, 2023;
2. Been enrolled in E-Verify at the time they completed the Form I-9 for that employee;
3. Created a case in E-Verify for that employee (except for re-verification); and
4. Be currently enrolled in and, actively participate, in E-Verify.

The virtual re-inspection procedure is identical to the alternative inspection procedure described above, except the qualified employer must add “alternative procedure” with the date of the live video interaction to the appropriate section of the Form I-9. (The appropriate section is either the *Section 2 Additional Information* field on the Form I-9 or in *Section 3*.) Employers **should not** create a new case for these re-inspections.

**Employers who do not meet all four virtual re-inspection requirements above must perform an in-person physical examination of necessary documents by August 30, 2023.**

See our [previous alert](#) for more information and guidance on this physical re-inspection process, including how the company can use an “authorized representative” to physically re-inspect remote employees’ Form I-9 documents.

### **Additional guidance:**

Additional guidance on this topic can be found on the DHS and U.S. Citizenship and Immigration Services websites, such as [USCIS - “I-9 Central”](#). However, given the complexities and rapid changes in this area of law, employers are advised to consult with their Gunderson attorney to stay updated on the latest developments and protocols to ensure compliance with the Form I-9 requirements.

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