



# I-9 Record-Keeping and the End of COVID-19 Flexibilities

## Overview of Employment Verification

U.S. employers are required to verify the identity and employment authorization of individuals they hire using the Form I-9.

- After being hired and within three days of hire, employees complete Part 1 of Form I-9.
- Employees provide original documents to prove their identity and authorization to work.
- Employers review the employees' documents and identify which documents were reviewed on the Form I-9.
- Employers maintain the Form I-9 and may also keep copies of the supporting documents for a defined period.

Some employers may voluntarily use the E-Verify system to verify employees' document electronically with the Department of Homeland Security (DHS). E-Verify does not replace the I-9 record-keeping requirement, but it gives employers confidence that an employees' documents are legitimate. While it's optional, some employers may be required to use E-Verify by a state or as a condition for federal contracting.

## Pandemic Policies Are Ending

⚠️ The flexibility implemented during the COVID-19 pandemic for completing I-9s will end on **July 31, 2023**.

⚠️ Employers must complete in-person physical document inspections of employee documents that were remotely inspected by **August 30, 2023**.

*What were the pandemic-era requirements?* During the pandemic, DHS implemented an inspection deferral policy. Under this policy, employers with employees working remotely could remain compliant by following these steps:

- » New employees return Form I-9 with Section 1 completed and signed no later than the first day of employment (after accepting the job offer).
- » Employers inspect identity and authorization documentation furnished by new employees **AND** complete and sign Section 2 of the I-9 through in-person or remote means no later than three days after a new employee's first day of work.

## What Should Employers Do Now?

Employers should **take steps now** to complete physical examination of documents before August 30, 2023. This is also an opportunity for employers to conduct an internal audit of their Form I-9s with counsel. Employers should also review the integrity of their employment verification procedures, especially if they relied on the pandemic era's remote verification policies. This will give them the information needed to make an informed decision about whether to take advantage of any future remote verification system in the case that DHS implements one.

If you have any questions, please contact **Jackson & Hertogs** at **415-986-4559**