




EBOOK

5 Potential Blind Spots

to Consider Before
Implementing Virtual I-9

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Last year, the Department of Homeland Security (DHS) introduced a new “optional alternative procedure” for verifying Form I-9 documents which has the potential to transform the way employers complete this crucial onboarding task

According to DHS, the new so-called “virtual I-9” option, which enables qualifying employers to remotely examine I-9 documentation, could help improve paperwork accuracy, streamline onboarding efficiency, and facilitate a more “centralized” approach previously unattainable with physical I-9 document inspections.

But before you forge ahead with this option at your organization, it’s important to consider some potential “blind spots” about the virtual I-9 process that you may not have fully considered. Towards the end of this article, we’ll also discuss some strategies for helping you address these concerns utilizing people and technology.

Blind Spot #1:

“We can use the virtual option whenever and wherever we want”

At its core, virtual document review is an “optional” procedure that eligible employers can utilize at one or more of their hiring sites.

But if an employer chooses to offer virtual document review, there are certain “consistency requirements” which must be observed to help avoid potential discriminatory practices. These requirements can be summarized as follows:

- Employers must offer the virtual option consistently for all employees at a participating hiring site
- Despite the above, an employer may choose to offer the virtual option for remote hires only but continue to apply physical examination procedures to all employees who work onsite or in a hybrid capacity
- Under no circumstances can employers unlawfully discriminate, such as by deciding who is eligible for virtual based on an employee’s citizenship, immigration status, or national origin



Blind Spot #2:

“Reviewing Form I-9 documentation is always straight-forward”

As many employers are aware, the Form I-9 can be one of the most complicated one-page forms in America, due in large part to the document review process and some of the complex rules which must be navigated.

For example, under longstanding Form I-9 rules, employers can only accept certain types of documents which demonstrate a new hire’s identity and eligibility to work in the United States. Employers using the virtual process must conduct this review remotely, examining copies of documents (both front and back, if the document is two-sided) to determine if it reasonably appears to be genuine.

While the document review process may sound simple in theory, it often involves making several determinations including:

- Is the document presented on the Lists of Acceptable Documents?
- Has the employee presented sufficient documentation showing both identity and employment authorization?
- Is the document “original” and if not, is there an applicable exception?
- Is the document unexpired and if not, is there an applicable exception?
- Is a document “receipt” acceptable, and if so, for how long?



While many HR representatives are well-versed in this exercise, the process can be challenging for an untrained or inexperienced document reviewer, who may not be familiar with all of the document types and rules.

To complicate matters, an employer or authorized representative cannot specify which documentation the employee may present, a practice which may be considered “unfair” and discriminatory when based on an employee’s protected class.

Blind Spot #3:

“I can easily identify a genuine document for I-9 purposes”

Once the documentation has been clearly identified, the employer or authorized representative must perform another deceptively simple task - determining whether the documentation reasonably appears to be genuine, and relates to the employee presenting it. Employers using the virtual process must perform this step by examining the document copies (front and back if the document is two-sided) and conducting a live video interaction with the employee.

This document evaluation, while simple in concept, involves a delicate balancing act of document fraud review and anti-discrimination awareness. On the one hand, DHS recommends that employers using the virtual process assess whether the presented documentation appears facially valid, has the expected level of quality, and otherwise appears original, intact, and undisturbed - each as noted in the DHS fraudulent document training that was published shortly after the virtual option went into effect.

But on the other hand, the Department of Justice, through its Immigrant and Employee Rights (IER) unit, investigates and prosecutes employers who improperly reject Form I-9 related documentation, particularly when based on a worker's citizenship status or national origin. Employers who commit such “unfair documentary practices” may be subject to civil penalties, ongoing training and monitoring obligations, and backpay for affected workers.

Blind Spot #4:

“All we need to do is to sign up for E-Verify”

In order to use the virtual document review option, employers must be an E-Verify participant “in good standing” which means you need to do the following:

- Enroll in E-Verify with respect to all hiring sites that will offer the new virtual option
- Use E-Verify to confirm the work eligibility of newly-hired employees at those sites
- Comply with all other requirements of the E-Verify program
- The E-Verify User Manual provides a detailed list of all of these rules, including very specific timelines relating to case creation and mismatch resolution - two of the most heavily monitored and enforced requirements.



Blind Spot #5:

“Our HR staff has the bandwidth to complete all of our I-9s virtually”

For many HR representatives, the new virtual option is both a blessing and a curse. While virtual I-9 document review may help organizations standardize their processes and facilitate completion for remote workers, it also has the potential to significantly increase a centralized HR team’s workload, particularly when the task of reviewing documents, following up with employees, and completing the I-9 rests exclusively with HR.



Just finding a window to schedule and complete the video interaction in three days can be challenging, and pull your team’s time and resources away from other activities.

Below are a few potential burdens for HR departments that are considering handling the virtual process “in-house”:

- Attending ongoing I-9 document training, including the new fraudulent document awareness program recommended by DHS
- Ensuring that employees upload correct and complete documentation (including both front and back, if the document is two-sided)
- Making sure employees have appropriate technology (camera-enabled device) as well as software to conduct the live video meeting
- Scheduling the live video interactions with newly hired employees, including rescheduling no-shows or employees with meeting conflicts
- Having an appropriate “exception” process in place for employees who are unable or unwilling to participate in a virtual review
- Completing all I-9 forms for employees across the United States, a task which may be substantial depending on the number of new hires and reverifications
- Creating and implementing an internal QA or self-audit process to review I-9s completed in-house for accuracy



The additional time and effort that may be required to implement, complete, and audit these tasks can be significant, and should be examined to help determine if you do have the bandwidth to handle the virtual process “in-house”.



Fortunately, there are several potential strategies that organizations can utilize to address one or more of these virtual I-9 challenges.

Overcoming the Blind Spots

1 Review your current I-9 and E-Verify practices:

Employers (ideally with the assistance of counsel), may wish to review their current policies and procedures to identify potential weaknesses and areas for improvement. In doing so, employers can carefully map out how the virtual process will be handled and designate all of the various I-9 and E-Verify tasks and responsible parties. Our [I-9 Virtual Verification Checklist](#) provides an in-depth overview of the virtual requirements and tasks involved.

2 Train Staff on both I-9 and E-Verify rules and procedures:

As described above, the Form I-9 has many potential traps for the unwary, particularly surrounding the document review and examination process. Employers handling the virtual process “in-house” should consider implementing ongoing Form I-9 training for all reviewers which includes some of the trickier rules for non-citizens as well as safeguards to help avoid potential instances of Form I-9 related discrimination.

3 Train Staff on both I-9 and E-Verify rules and procedures:

Employers looking to minimize their HR team’s burden can now use trained authorized representatives to conduct the required video review, examine Form I-9 documentation, and complete the Form I-9 and E-Verify submission through an entirely virtual process. This outsourced model, when powered by electronic I-9 software, can help HR reduce their I-9 “paperwork” responsibilities, improve I-9 accuracy, and offer a more streamlined onboarding experience for newly hired employees.



If you are looking for assistance with managing your I-9s through such an outsourced model that utilizes technology, take a look at our [I-9 HQ™ suite of services](#), which now includes a virtual component of our award-winning I-9 Anywhere® solution.



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