How to develop an SOP for handling remote I-9 Forms

Though the COVID-19 pandemic threw many business procedures for a loop, it's not an excuse to put off legal obligations. Companies still must complete an I-9 form for each new person hired. This is still true even if the employee is onboarded remotely. That's why it's important to have an SOP for handling remote I-9 forms.

Still, doing so remotely can be challenging, so it's ideal to put a plan in place to do so. This offers a clear and demonstrable example of the "good faith" efforts that are so important to Immigration and Customs Enforcement (ICE) should the agency review your I-9s to look for errors and omissions.

Your company's own unique hiring practices and procedures will influence your remote I-9 Standard Operating Procedure. However, the following framework can help in creating a concise SOP that can be used during the pandemic and beyond.

Define your remote work policy

Begin by mentioning your organization's policy for when an employee will be onboarded remotely. For many organizations, this decision is largely based on where the employee will be working, how far that individual is from the nearest office or work location, or perhaps the type of job role.

Make it clear that social distancing due to COVID-19, however, may expand the policy as necessary. Circumstances may dictate all or most new hires get onboarded through an entirely remote process, not just ones fitting the outlined descriptions.

Determine your verification method

Employers have two options for remote verification during the pandemic: virtual verification or the use of an authorized representative.

Virtual verification enables an employer operating remotely to examine an employee's documents at the present time via email, fax, secure upload, or another virtual method. When normal business operations later resume, the employer will need to conduct an in-person verification.

The second path involves asking authorized representatives (also known as "remote agents") to review documents and sign Section 2 of the Form I-9 on the employer's behalf. This method proves popular among employers because the employee only needs to be verified once (by the remote agent), and there are no follow-up tasks or special Form I-9 annotations needed. Take care, though, when selecting a remote agent because employers assume responsibility for the actions of their designated representative.

Outline the remote I-9 process in your SOP

Regardless of the method, leave no doubt about what tasks need to be performed in the remote I-9 process and who performs each action. When using a remote agent, for instance, someone from your HR department likely will start the process. They should send the new hire a detailed email that describes Form I-9 and the guidelines for choosing a remote agent. The employee will then complete Section 1 remotely, decide which documents to present, and then visit the remote agent. The remote agent will review the instructions from HR, examine the documents presented by the new hire, and complete Section 2. They will then make copies of the supporting documents for the employer to retain. Your HR team will review the I-9 and the copies and submit them to E-Verify if applicable.

Some companies find it helpful to create a flowchart or similar diagram. This visual provides a nice overview of the various tasks and the people involved at each step.

Include citations to legal authority

Make it clear that your chosen verification path is in accordance with established laws and guidelines. You may even want to download, print, or otherwise preserve relevant governmental announcements as support for your verification process.

Employers using the virtual verification method should reference the ICE announcement on March 20, 2020, that introduced and described the process for virtually verifying a new hire employee. Employers using the remote agent path can reference the Department of Homeland Security (DHS) regulations, 8 CFR 274a.2(b)(1)(ii), which authorize the use of a third-party representative for the completion of Section 2 or Section 3 as applicable. The latest Form I-9 instructions are also a good reference source, as they now clearly indicate that an authorized representative can be any person the employer designates.

Document the details

While the information presented in the SOP may be clear to HR staff going through the process at the present time, consider how well future HR reps will understand procedures. Spell things out in sufficient detail to leave no doubt as to who performed which actions and how.

For instance, someone looking at the SOP down the line should know the accepted ways a new hire might have provided documents for review via virtual verification. The reader of the SOP also should understand the process established for flagging the I-9 for in-person follow-up and who should meet with the employee in-person to annotate the I-9 once normal business operations resume.

Provide an "additional information" section

End your Remote I-9 SOP with links to helpful internal or external resources. These resources may include the I-9 regulations, the M-274 handbook, your electronic I-9 help files (if applicable). You may also include other educational materials that support the overall SOP. Employers working closely with legal counsel may wish to include their attorney's contact info in case any tricky questions arise.

Additional Resource: Make managing your SOPs a breeze with these great SOP software tools.