

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

2022

2021

2020



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Introduction



Kristen E. Smith

Member

ksmith@bsk.com

Syracuse, NY

TODAY'S AGENDA

Kristen Smith – (12:00PM-12:05PM)

- Introduction / Agenda

Daniel Pautz – (12:05PM-12:15PM)

- ADA Website Litigation

Joanna Silver – (12:15PM-12:25PM)

- New I-9 Remote Verification Option for E-Verify Employers

Howard Miller – (12:25PM-12:35PM)

- Support Animals in the Workplace

Travis Talerico – (12:35PM – 12:45PM)

- Workplace Harassment in the Age of Remote Work

ADA Website Litigation



Daniel J. Pautz

Member

dpautz@bsk.com

Syracuse, NY

New I-9 Remote Verification Option for E-Verify Employers



Joanna L. Silver

Member

jsilver@bsk.com

White Plains, NY

New Form I-9, Available Today!

- Can use now, MUST use by November 1, 2023
- Changes include:
 - Sections 1 and 2 are on one page
 - Fillable form to be used on tablets and mobile devices
 - Preparer/translator certification and reverification and rehire sections of form are now supplements to the form to be used when necessary
 - Revised Lists of Acceptable Documents page to include acceptable receipts and guidance on automatic extensions of work authorization
 - Instructions are only 8 pages instead of 15

Covid Flexibilities are Over, 30 Days to Complete Physical Inspection of Documents

- June 20th Weekly Webinar discussed the end of Covid-era Form I-9 Flexibilities (<https://www.youtube.com/watch?v=e67b-a-N86l>)
- By August 30, 2023, employers must perform in-person, physical inspections of identity and employment eligibility documents of all employees hired between March 20, 2020 and July 31, 2023 whose documents were inspected remotely pursuant to the Covid-era Form I-9 flexibilities
- Can be done by employer or authorized representative of the employer, and Form I-9 must be updated to note the completion of the physical inspection of documents

DHS Provides Alternative Procedure for Completing Form I-9

- Effective August 1, 2023 -- today!
- Remote examination of identity and work authorization documents is only available for “qualified, E-Verify employers”:
 - In good standing with E-Verify
 - Enrolled in E-Verify with respect to all hiring sites that use the Alternative Procedure
 - Comply with all E-Verify requirements
 - If employer was enrolled in E-Verify and performed remote inspection of employee’s Form I-9 documents using the Covid-era flexibilities, they can use Alternative Procedure to satisfy the physical inspection of documents that must occur by August 30, 2023

What is the Alternative Procedure?

- Within three business days of an employee's first day of employment, E-Verify employer must:
 - Examine copies (front and back) of Form I-9 documents provided by employee to ensure that they reasonably appear to be genuine
 - Conduct a live video interaction with employee to be sure that the documents are related to the individual; employee presents actual documents
 - Complete on new Form I-9 where indicated that the Alternative Procedure was used to examine documents and complete Section 2 or reverification supplement
 - Retain clear copy of documents (front and back)
 - Create E-Verify case for new hire

Odds and Ends

- Alternative Procedure is optional, not required
- If offered to new employees at hiring site, must do so consistently for all employees at that site
- Employers can choose to use Alternative Procedure for remote employees only and continue to use physical inspection for onsite or hybrid employees
- Must allow employees who are unable or unwilling to submit documents using the Alternative Procedure to submit documents for physical inspection

Support Animals in the Workplace



Howard M. Miller

Member

hmiller@bsk.com

Garden City, NY

Workplace Harassment in the Age of Remote Work



Travis R. Talerico

Associate

ttalerico@bsk.com

Rochester, NY

Harassment in the Remote Workplace

- On April 11, 2023, the New York State Department of Labor (DOL), in consultation with the New York State Division of Human Rights, released a revised sexual harassment prevention model policy, to update the one provided by the DOL in 2018.
- Among other things, the revised policy emphasizes that sexual harassment can occur while employees are working remotely, such as through virtual meeting platforms, messaging apps, and after working hours between personal cell phones.

Harassment in the Remote Workplace

- The new model policy also emphasizes New York’s standard to establish a prima facie case of sexual harassment, which is “any harassing behavior that rises above petty slights and trivial inconveniences” – a lower standard than the “severe and pervasive” standard under federal law.
- The New York standard is analyzed from the standpoint of a reasonable victim of discrimination with the same protected characteristics.
- New York State’s updated training materials released alongside the new model policy, also now include references and hypotheticals related to remote harassment.

Harassment in the Remote Workplace

- The concept of remote harassment is not necessarily new, but historically has been difficult for a plaintiff (under federal law) to establish a prima facia claim under the “severe and pervasive” standard, particularly when none of the harassing behavior is done face-to-face, or in the physical worksite.
- However, this may be changing moving forward, particularly regarding claims under New York State law.

Harassment in the Remote Workplace

- Practical Implications
 - Revised trainings – taking note of NYS’ revised training materials now including training and hypothetical scenarios regarding virtual harassment (through instant messenger chat, Teams, Zoom, etc.)
 - Increased education for supervisors and employees
 - To some extent, potential less control for employers to control harassing behavior
 - Potential for harassing behavior to occur outside of standard working or office hours/outside of the workplace
 - Potential for it to be “easier” for harassing behavior or inappropriate comments to occur (e.g. saying something to someone through instant message or video call that may not be said in a face-to-face conversation)

Harassment in the Remote Workplace

- Best Practices
 - Ensure harassment and discrimination trainings are up to date
 - Revise handbooks and other policies as needed
 - Ensure proper channels are in place to report all forms of harassment
 - Encourage employees to report any harassing behavior, through any medium
 - Remind all employees that no harassing behavior will be tolerated, in any way, shape, or form

Your Questions



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Member

ksmith@bsk.com

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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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