

What Employers Should Know About the New Alternative Procedure

I-9 Virtual Verification Option and New I-9 Form

October 25, 2023

Littler[®]

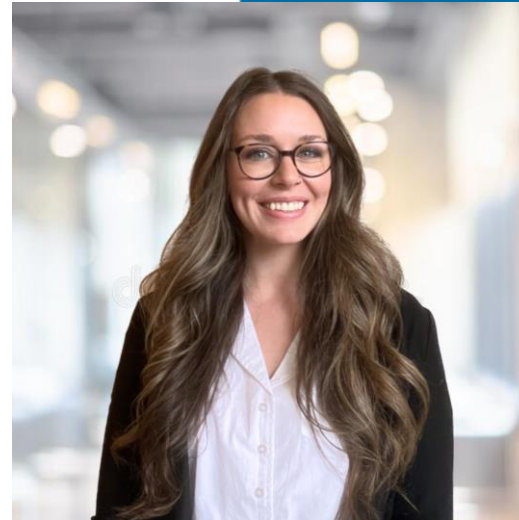
Compliance **HR**

Today's Webinar Host

Stephanie Zielinski

Marketing Director of ComplianceHR

Zielinski@ComplianceHR.com



Who We Are



- Artificial Intelligence
- Infrastructure enterprise



- Subject matter expertise
- Knowledge management team
- Case databases



What we do:
Deliver expert guidance in a fraction of time and cost vs traditional methods

Simplify the complexity of employment law



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

Compliance Essentials



Compliance HR
PolicySmart™
Changing the way companies create and maintain compliant handbooks

PolicySmart™ takes handbooks to the next level.
PolicySmart™ is an intuitive handbook compliance tool that provides employers with national and state-specific templates, a unique compliance timeline, and so much more.

Federal and State Compliant Templates:
A comprehensive library of federal and state-specific templates, as well as policy templates that are fully customizable, depending on your workforce and operational needs.

Innovative Compliance Timeline:
Provides an up-to-date timeline of important legal changes that will soon take effect in your selected jurisdictions, helping to ensure that policies are updated at the right time.

Handbook Policy Checklists:
Gain access to jurisdiction-specific checklists that tell employers which policies are required by law to appear in their handbook and who is covered by each policy.

Automated Monthly Emails:
Receive a summary and analysis of relevant legal developments that impact your workplace, with guidance on how to revise policy language.



Compliance HR
Reference Center
The Comprehensive Solution for Employment Law and Common Compliance Questions

Answer your compliance questions with the Reference Center

Local, State and Federal Information
A comprehensive library of state and national information that bridges a variety of compliance topics to ensure you're able to access important data.

Wide Range of Compliance Topics
From COVID-19 to final pay, FMLA to rate changes, pay frequency to an call, organizations of any size and in any sector can benefit from this information.

Streamlined Workflow
The Reference Center is designed to help people across your organization quickly find answers to their questions, whether they're on a centralized legal team or an HR team distributed across the country.

PolicySmart provides you with:

- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:


- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - COVID-19, final pay, FMLA, rate changes, and more

When coupled, these two solutions provide you with comprehensive compliance program support

Immigration and PolicySmart

PolicySmart

About PolicySmart



This application provides you with the tools you need to create compliant and full of documents:

- o A National Template
- o State Supplements
- o Policy Checklists
- o State Guides

The **National Template** includes a number of traditional policies (e.g., EEO, Harassment, Workplace Bullying, Holidays, Personal Appearance and Grooming) along with optional sample policies you can customize and provide to employees and contractors (e.g., Workplace Bullying, Holidays, Personal Appearance and Grooming).

There is a **State Supplement** to that National Template for every state and the District of Columbia. In the State Supplements you will find distinctions from those general, national policies. In the state materials, you will find addenda that identify the protected categories under scheduling, lactation accommodation and leaves of absence policies. We also provide policies tracking sick leave, lactation accommodation municipalities, which are localities with 100,000 or more residents.

The State Supplement policies are drafted to comprehensively track statutory requirements, while also identifying places for customization intended for the policy drafter. These comments may explain why specific language appears, signal updates made within the last year or provide you customize the policy.

The application also provides **Policy Checklists** and substantive guidance for each state. At the beginning of each Policy Checklist, there is a list of materials can be used as references as you are compiling a new set of policies, or reviewing existing policies.

In a panel on the right, there are options for filtering the list of documents. For example, you can filter down to the supplement for a specific

COMMITMENT TO DIVERSITY

Discrimination, Harassment and Retaliation Prevention Policy [5+Employees]

Equal Employment Opportunity

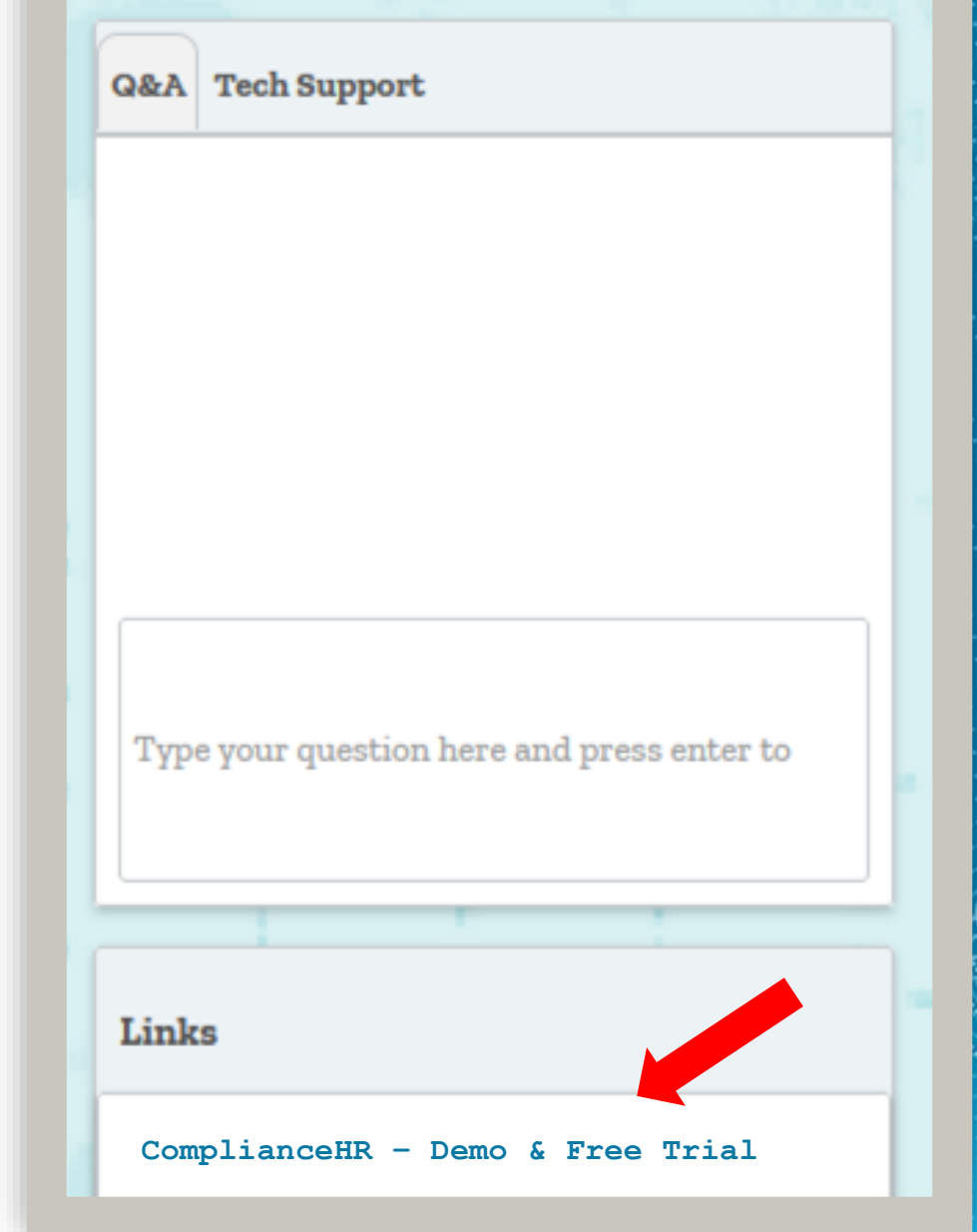
[Company Name] is an equal opportunity employer. In accordance with applicable law, we prohibit discrimination and harassment against employees, applicants for employment, individuals providing services in the workplace pursuant to a contract, unpaid interns and volunteers based on their actual or perceived: race (including traits historically associated with race, such as hair texture and protective hairstyles), religious creed, color, national origin, citizenship status, ancestry, physical or mental disability, medical condition, genetic information, marital status (including registered domestic partnership status), sex and gender (including pregnancy, childbirth, lactation and related medical conditions), gender identity and gender expression (including transgender individuals who are transitioning, have transitioned, or are perceived to be transitioning to the gender with which they identify), age (40 and over), sexual orientation, Civil Air Patrol status, military and veteran status, an individual's reproductive health decisions

For purposes of this policy, discrimination on the basis of "national origin" also includes discrimination against an individual because that person holds or presents the California driver's license issued to those who cannot document their lawful presence in the United States, as well as discrimination based upon any of the following: an individual's or individual's ancestors' actual or perceived physical, cultural or linguistic characteristics associated with a national origin group; marriage to or association with individuals of a national origin group; tribal affiliation; membership in or association with an organization identified with or seeking to promote the interests of a national origin group; attendance or participation in schools, churches, temples, mosques or other religious institutions generally used by persons of a national origin group; or a name that is associated with a national origin group. An employee's or applicant for employment's **immigration** status will not be considered for any employment purpose except as necessary to comply with federal, state or local law.

Register for a Navigator Suite Demonstration and Free Trial

Benefits of a custom demonstration:

- Discuss your organization's requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies
- Provide free trial in Navigator Suite sandbox



Presented By

Bruce Buchanan

Special Counsel at Littler

Nashville

bbuchanan@littler.com



Virtual Verification Becomes Reality

- Effective Aug. 1, 2023, Department of Homeland Security (DHS) provided optional alternative procedure (also referred to as “virtual verification”) to in-person physical examination of documentation presented by new employees for purpose of completing Form I-9.



**Homeland
Security**

Who Can Participate?

- Qualified Employers, as defined below, may participate in Alternative Procedure:
 - Participants in good standing in E-Verify;
 - Enrolled in E-Verify with respect for all hiring sites using alternative procedure;
 - Comply with all E-Verify requirements, including verifying employment eligibility of newly hired employees in United States;
 - Memorandum of Understanding lists requirements;
 - Complete E-Verify training about fraud awareness and anti-discrimination.

Using Alternative Procedure

01

Applicant emails copies (front & back) of Form I-9 documentation or acceptable receipt for employer examination to ensure documentation presented reasonably appears to be genuine;

02

Conduct live video interaction (no format restrictions on virtual methods – Teams, Zoom, FaceTime, iPhone) with individual presenting same documentation as in Step 1 to ensure documentation reasonably appears to be genuine and relate to individual;

03

Indicate on new Form I-9, by completing box, that alternative procedure was used to examine documentation OR Old I-9 Form, in “additional information” field of Section 2, write alternative procedure used to examine documentation to complete Section 2 and date of such;

04

Retain, consistent with regulations, clear & legible copy of documentation (front & back if documentation is two-sided).

Must Qualified Employers Use Alternative Procedure?

- Qualified Employers may opt to use Virtual Verification **or not**;
- Qualified Employers may opt to only use for remote employees, and not for employees who work onsite or in hybrid capacity;
- Qualified Employers **MAY NOT** pick which employees to utilize alternative procedure at hiring site –, it's all employees or none, except for distinction between remote and on-site allowed.

Use of Alternative Procedure to Reverify

- Employers may use alternative procedure, in lieu of physical examination, to re-verify employees when their EAD or visa expire must follow steps of alternative procedure;
- Must add “alternative procedure” with date of examination (i.e., date that employer performed live video interaction) in Supplement B (formerly Section 3), as appropriate.

What Don't We Know?

- Can employer use virtual verification process during I-9 self-audit or to make routine corrections?
- If employers retain all copies for virtual verification I-9 forms, does employer also now need to do same for in-person document inspection?
- How does employer prove that it conducted the inspection by video?
- Will routine ICE audits increase now that there is virtual option? E-Verify procedures prevent use of E-Verify outside U.S. - Does same apply to the employer's virtual verification of employee's documents – i.e., HR functions offshore?





Recommended Practices

- Provide Lists of Acceptable Documents prior to Form I-9 being presented;
- Be consistent when attaching, or not attaching, copies of documentation;
- Purge old I-9s of ex-employees – 3 years after date of hire or 1 year after employment ends – whichever is longer – but remember few states may require longer storage;
- Internal I-9 audits are worthwhile but ensure this is done by a knowledgeable SME; and
- For internal audits, NEVER correct Form I-9 without initialing and dating the change with preferably different color pen – without this there could be a charge of document fraud.

New Proposed ICE Regulation

- Remote Document Verification Pilot 1;
- Virtual verification for non-E-Verify with 500 or less employers – not in effect yet;
- Participating employers provide data up to twice a year (# new hires, # employees asking for physical inspection, challenges to use of Pilot);
- Must examine and retain clear and legible electronic copies of ID and work authorization documents; and
- May be required to implement other measures to ensure security. (e.g., fraudulent document and anti-discrimination training).

Background on I-9 Compliance

- I-9 forms are required for every employee hired since 11/07/1986;
- Employee completes Section 1 on or before 1st day of work for pay;
- Employer, or its authorized representative, has 3 business days, after 1st day of work for pay, to complete Section 2 & examine original documents;
- Cannot accept expired documents unless they are auto-extended; and
- Must not hire persons who lack valid work authorization – actual or constructive knowledge.

I-9 Form – Return to 1 Page

- As of Aug. 1, 2023, USCIS issued new I-9 form (Ed. 8/1/23);
- Between Aug. 1 and Oct. 31, 2023, employers may use new Form I-9 or prior version (Ed. – 10/21/2019) for new hires and rehires/reverifications in Section 3;
- DO NOT have current employees complete new I-9 form.



New I-9 Form

- Different than pre-2013 one-page form in that:
 - Supplement A page for the Translator/Preparer;
 - Supplement B page (formerly Section 3) for Reverification and Rehire.



New Form I-9



Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No.1615-0047
Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

New Form I-9 - Section 1

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment , but not before accepting a job offer.							
Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)		
Address (Street Number and Name)		Apt. Number (if any)	City or Town		State	ZIP Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address		Employee's Telephone Number		
I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.	Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):						
	<input type="checkbox"/> 1. A citizen of the United States						
	<input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)						
	<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)						
	<input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any)						
If you check Item Number 4. , enter one of these:							
USCIS A-Number		OR	Form I-94 Admission Number		OR	Foreign Passport Number and Country of Issuance	
Signature of Employee					Today's Date (mm/dd/yyyy)		
If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the Preparer and/or Translator Certification on Page 3.							

New Form I-9 - Section 2

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign **Section 2** within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see Instructions.

	List A	OR	List B	AND	List C
Document Title 1					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 2 (if any)	Additional Information				
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 3 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)	<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.				
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.			First Day of Employment (mm/dd/yyyy):		
Last Name, First Name and Title of Employer or Authorized Representative		Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)	
Employer's Business or Organization Name		Employer's Business or Organization Address, City or Town, State, ZIP Code			

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

Form I-9 Edition 08/01/23 Page 1 of 4

Check here if you used an alternative procedure authorized by DHS to examine documents.



New Form I-9 – Reverification



Supplement B, Reverification and Rehire (formerly Section 3)

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
Supplement B
OMB No. 1615-0047
Expires 07/31/2026

Last Name (Family Name) from Section 1.	First Name (Given Name) from Section 1.	Middle initial (if any) from Section 1.
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Instructions: This supplement replaces Section 3 on the previous version of Form I-9. Only use this page if your employee requires reverification, is rehired within three years of the date the original Form I-9 was completed, or provides proof of a legal name change. Enter the employee's name in the fields above. Use a new section for each reverification or rehire. Review the Form I-9 instructions before completing this page. Keep this page as part of the employee's Form I-9 record. Additional guidance can be found in the [Handbook for Employers: Guidance for Completing Form I-9 \(M-274\)](#)

Date of Rehire (if applicable)	New Name (if applicable)		
Date (mm/dd/yyyy)	Last Name (Family Name)	First Name (Given Name)	Middle Initial

Reverification: If the employee requires reverification, your employee can choose to present any acceptable List A or List C documentation to show continued employment authorization. Enter the document information in the spaces below.

Document Title	Document Number (if any)	Expiration Date (if any) (mm/dd/yyyy)
----------------	--------------------------	---------------------------------------

I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented documentation, the documentation I examined appears to be genuine and to relate to the individual who presented it.

Name of Employer or Authorized Representative	Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)
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Additional Information (Initial and date each notation.)

Check here if you used an alternative procedure authorized by DHS to examine documents.

Check here if you used an alternative procedure authorized by DHS to examine documents.



Other Changes to I-9 Form

- Removed use of “alien authorized to work” in Section 1 and replaced with “noncitizen authorized to work”;
- Revised Lists of Acceptable Documents to include some acceptable receipts plus links on automatic extensions of employment authorization documentation;
- Added box that eligible employers must check if employee’s Form I-9 documentation was examined under alternative procedure rather than physical examination; and
- Reduced length of instructions from 15 pages to 8 pages.

NextGen Modernizes E-Verify & Form I-9 Process

- Still in development, pilot to be tested first – Spring 2024, then direct E-Verify users;
- Employee will be able to set up secure electronic account and automatically send their information and documentation to their employer;
- Permits employees to create account, resolve E-Verify TNCs “in advance and directly with government, instead of through their employer, and then receive an electronic verification response that they can use and update with subsequent employers”;
- Will integrate portions of Form I-9 but documents will need to be viewed by employer;
- Employees would have a direct link into E-Verify and I-9 form will be completed online.

Presented by

- Bruce E. Buchanan is Special Counsel for Littler, located in their Nashville, TN office. He represents employers in various aspects of immigration law, with a special emphasis on immigration compliance, and labor law, such as NLRB and wage & hour matters.
- He received his J.D. from the Vanderbilt University in 1982. Before going into private practice in 2003, Mr. Buchanan served as senior trial specialist for the NLRB for 20 years. He also served from 1991 to 2003 as Adjunct Law Professor at William H. Bowen UALR School of Law.
- Mr. Buchanan is co-author of The I-9 and E-Verify Handbook, 2d. ed. He has written extensively on employer immigration compliance issues in various blogs. Mr. Buchanan is admitted to practice in Tennessee, Georgia, Florida, and Arkansas. He may be reached at bbuchanan@littler.com or (615) 514-4122.



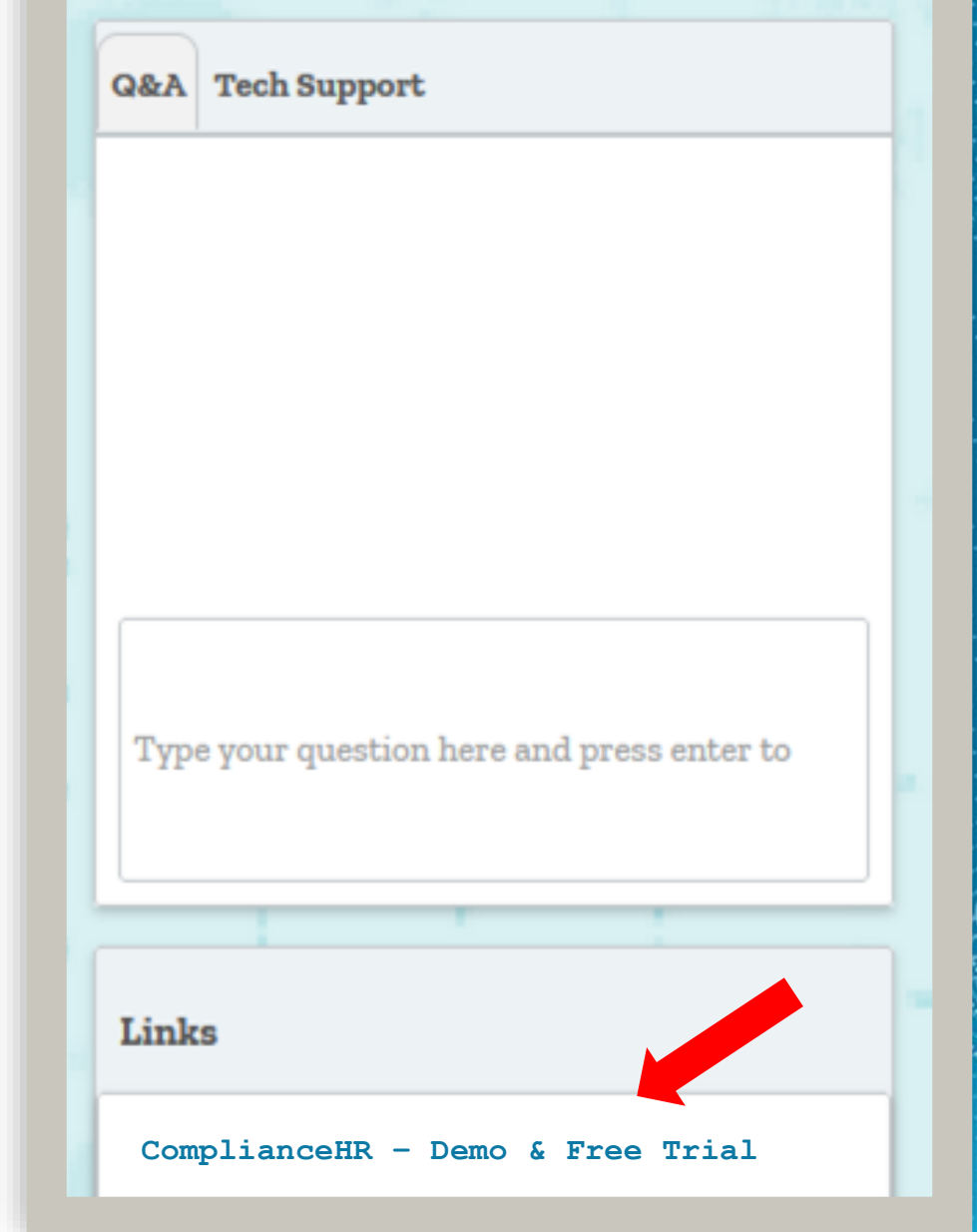
Bruce E. Buchanan

Littler Mendelson P.C
Nashville, TN
Telephone: 615- 514 4122

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Benefits of a custom demonstration:

- Discuss your organization's requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies
- Provide free trial in Navigator Suite sandbox



Questions?

Please add any additional questions to the Q&A box

Thank you!

The background is a solid blue color. On the right side, there is a decorative graphic consisting of many parallel, slightly curved lines of white dots. These lines are arranged to form a large, stylized wave or ribbon shape that curves upwards and to the right, creating a sense of motion and depth.