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Form I-9 Inspection Requirement Compliance as COVID-19 Remote Verification Flexibility Sunsets



The U.S. Department of Homeland Security (DHS) and Immigration and Customs Enforcement (ICE) have announced that employers will have until August 30, 2023, to physically verify Form I-9 documentation that may have been reviewed remotely during the multiyear compliance flexibility. Starting in March 2020, certain employers were permitted to defer the physical presence requirement of I-9 documentation inspection. This allowed employers to electronically or remotely review I-9 documentation and postpone a physical inspection until normal operations resumed. Subsequent announcements from ICE permitted employers to continue to verify documentation remotely until the affected employees returned to the office on a regular, consistent, or predictable basis, or until the extension of the flexibilities ended—whichever was earlier.

The recent announcement confirms that employers must resume physical, in-person verification of I-9 documentation for new employees hired after July 31, 2023. Further, employers who onboarded employees remotely must physically verify their I-9 documentation by August 30, 2023.

The May 2023 announcement extending COVID-19 flexibilities does *not* change the compliance requirements for employees that were onboarded prior to March 2020, had their documents verified physically, or consistently work in an office. Since March 2021, employers have been required to physically inspect I-9 documentation of in-office employees within three business days of the individual's start date (or within three business days of their return to the office, if they joined remotely). Employers should continue to verify I-9 documents for these employees in person and promptly physically inspect the I-9 documentation of any employees who have since returned to the office.

Employers that remotely verified I-9 documentation for individuals since March 2020 should work to identify all Form I-9 documents requiring updates and begin the process of completing physical inspections. U.S. Citizenship and Immigration Services (USCIS) has provided [guidance](#) on notating subsequent physical inspections, including [scenarios](#) in which individuals present documents that are different from those used during the remote inspection, are no longer employed by the company, or presented documents that are now expired.

Employers still operating a remote workforce or employing individuals in different geographic areas may choose to utilize an authorized representative to complete the in-person inspection.

An update on the I-9 process is expected in August 2023. For now, employers should continue to follow guidance from ICE and USCIS on the I-9 process. For questions regarding compliance with the Form I-9 inspection requirement and sunset of the COVID-19 flexibility, please contact experienced counsel.

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