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Form I-9 Compliance Updates for Employers

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In March, 2020, as a direct response to the COVID-19 pandemic, the Immigration and Customs Enforcement (ICE) announced its Form I-9 Flexibility Policy, effective as of April 1, 2020. As a reminder, this flexibility policy with regard to employment eligibility verification, includes the following provisions for employers and workplaces operating exclusively remotely due to Covid-19:

- 1) Employers with employees taking physical proximity precautions due to the COVID-19 pandemic are *temporarily exempt* from reviewing the employees' identity and employment authorization documents *in the employee's physical presence*;
- 2) Employers are still required to inspect Section 2 documents remotely and obtain, inspect, and retain copies of the documents within three (3) business days of the date of hire; and
- 3) Employers using this I-9 flexibility option must provide written documentation of their remote onboarding and telework policy for each employee.

While the Flexibility Policy was set to expire August 31, 2021, on the evening of that date, ICE announced that it extended the policy until December 31, 2021.

However, it is still important for employers to be prepared to shift their internal Form I-9 protocols when required. ICE's Flexibility Policy no longer applies to a business as soon as either of the following situations arise:

- 1) ICE's I-9 flexibility policy ends; or
- 2) Employees have returned to the office on a regular, consistent or predictable basis.

If one of the above situations occur, employers must conduct the following steps immediately:

- 1) All employees who were onboarded using remote verification must report to their employer within 3 business days for in-person verification of identity and employment eligibility documentation for Form I-9;
- 2) When physical inspection takes place after normal operations resume, employers need to write "COVID-19" as the reason for the physical inspection delay in the Section 2 "Additional Information field" and should add "documents physically examined" with the date of inspection to the Section 2 "Additional Information" field or Section 3 of the Form I-9 and
- 3) Return to an in-person review of original documents moving forward.

It is recommended for employers to review and update their internal protocols for I-9 completion and maintenance in a workplace with shifting post-pandemic norms, as well as identify the employees who were onboarded during the pandemic for whom original documents were not inspected.



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Resources:

- <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>;
- <https://www.uscis.gov/i-9-central/covid-19-form-i-9-related-news/dhs-extends-form-i-9-requirement-flexibility-effective-september-1-2021>