



e-Alert

06.07.2023

Form I-9 Flexibility Provisions Ending

Background

The Form I-9 flexibility provision that was announced by the Department of Homeland Security (DHS) has been in place since March 2020, which we wrote about [here](#). This was a temporary solution during the COVID-19 pandemic and will end on July 31, 2023. Additionally, the US Immigration and Customs Enforcement (ICE) has [announced](#) that employers will have up to thirty (30) days to comply with the physical Form I-9 document inspection once these flexibilities end.

Summary

The flexibility provision gave employers that are operating remotely a temporary exemption with I-9 verifications. The provision allowed employers to virtually review employee's Form I-9 documentation, e.g., over video, Zoom, Teams, or email since they were unable to view these documents in person due to COVID-19. Viewing forms of identification remotely has been allowed until the employee returns to non-remote work on a regular or consistent basis. The end of this remote flexibility means that for any employee hired on or after August 1, 2023, employers must complete a physical inspection of the I-9 documents presented.

If employers have not begun physically reinspecting documents for employees whose

This content is provided with the understanding that Hilb Group is not rendering legal advice. While every effort is made to provide current information, the law changes regularly and laws may vary depending on the state or municipality. The material is made available for informational purposes only and is not a substitute for legal advice or your professional judgment. You should review applicable laws in your jurisdiction and consult experienced counsel for legal advice.

Form I-9 was done remotely, and who have since reported back into the workplace on a regular basis, they should begin doing so. According to ICE, reinspection of I-9's shall occur no later than August 30, 2023.

These flexibilities were never intended to apply to permanent remote employees, so if someone is hired to work from a remote location without expecting to ever work in person, these COVID virtual flexibilities did not apply.

Employer Next Steps

We have summarized key steps employers should take to comply with this regulation.

- Now is a good time to consider conducting a Form I-9 audit to ensure ongoing compliance with employer requirements
- This new announcement by ICE gives employers additional time to complete in-person physical inspection of identity and employment authorization documents and annotate the Form I-9 for this population
- DHS published a [Notice of Proposed Rulemaking](#) for alternative procedures allowing remote document examination for Form I-9 last year
- If you have any questions regarding this e-Alert, would like to learn more about our cloud-based I-9 Solution with a remote employee feature, or our I-9 audit solutions, please [email us](#)