

NEWS BRIEF

In-person Inspection of Forms I-9 Due Aug. 30

On May 4, 2023, the U.S. Department of Homeland Security (DHS) and the U.S. Immigration and Customs Enforcement (ICE) announced that employers have until Aug. 30, 2023, to complete physical inspection of identity and employment eligibility documents for any employee whose Employment Eligibility Verification form (Form I-9) was completed virtually according to the temporary flexibilities extended during the COVID-19 pandemic.

While the COVID-19 flexibility provisions will end on July 31, 2023, the announcement from the DHS and ICE clarifies that employers have until Aug. 30, 2023, to perform all required physical examinations of identity and employment eligibility documents.

Since March 2020, virtual inspections of identity and employment eligibility documents have been permitted in situations where all employees are working remotely due to COVID-19 or when a new employee is working remotely due to COVID-19 after April 1, 2021. The DHS and ICE announced in October 2022 that the flexibility provisions would end on July 31, 2023, but employers will now have one additional month to physically inspect identity and employment eligibility documents for employees hired on or after March 20, 2020, and who have received only a virtual or remote examination.

This guidance presumes that the same employer representative who reviewed the documents remotely will also conduct the in-person document review. However, if the employer representative who virtually examined the documents is not the one who performs the physical inspection, the DHS previously advised employers that the representative conducting the physical inspection complete a new Section 2 of the Form I-9 and attach it to the completed remote inspection Form I-9.

Employer Takeaways

Even with the extension, ICE recommends that employers plan ahead for the compliance deadline to avoid mishaps when completing the in-person inspections.

The DHS and ICE recently proposed a permanent rule to allow employers to remotely review Form I-9 identity and employment eligibility documents when hiring, reverifying and rehiring employees. If finalized, the proposed rule would allow the DHS to create a framework to authorize alternative options for Form I-9 document examination procedures for some or all employers, according to a Notice of Proposed Rulemaking. The proposed rule would formalize the department's authority to extend flexibilities, provide alternative options and conduct pilot programs to further evaluate alternative procedures for some or all employers, regardless of whether their employees physically report to work at an employer worksite. Employers will want to follow the DHS' rulemaking process closely.

We will keep you apprised of any notable updates. Contact Premier Consulting Partners LLC for more resources.

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