

## DHS Announces End of Form I-9 Inspection Flexibilities



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The Immigration Reform and Control Act of 1986 requires employers to verify the employment eligibility of all newly hired employees using USCIS Form I-9. Within three days of the initial hiring date, the Act requires employers to physically inspect the documents that are produced to establish employment authorization and certify that they appear to be genuine.

On March 20, 2020, in response to the COVID-19 pandemic, the United States Department of Homeland Security (“DHS”) revised its rules to allow flexibility in the requirements related to Form I-9 inspection compliance. Specifically, DHS announced that employers with employees working remotely due to COVID-19 would not be required to review the employee’s identity and employment authorization documents in the employee’s physical presence. Instead, employers were permitted to inspect the documents remotely (*e.g.*, over video link, fax, or email, etc.) with the expectation that physical inspection take place once normal operations resumed.

On May 5, 2023, DHS announced the official end date of the COVID-19 pandemic temporary flexibilities. As of July 31, 2023, employers will be required to return to the pre-pandemic procedure of physically inspecting newly hired employees’ Form I-9 documentation. Additionally, the United States Immigration and Customs Enforcement (“ICE”) recently announced that employers will have until August 30, 2023 to complete in-person physical document inspections for employees whose documents were inspected remotely during the temporary flexibilities period.

Although this announcement signals the end of the DHS emergency pandemic flexibilities, remote documentation verification may return to the workplace sooner rather than later. On August 18, 2022, DHS published a Notice of Proposed Rule Making that would create a framework under which the Secretary of Homeland Security could authorize alternative options for document examination procedures with respect to some or all employers. Such procedures

could be implemented as part of a pilot program, or upon the Secretary's determination that such procedures offer an equivalent level of security, or as a temporary measure to address a public health emergency declared by the Secretary of Health and Human Services. DHS is currently in the process of reviewing public comments regarding the proposed rules and a final decision is expected to be issued at some point this year.

Employers should consult legal counsel for additional details regarding these obligations.

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