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The End of Temporary Form I-9 Flexibilities

Along with the end of the national emergency surrounding the COVID-19 pandemic comes an end to Form I-9 flexibilities previously offered by the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) that exempted certain employees from the physical document inspection requirements associated with completing Form I-9.

Employers have always been required to examine the identity and employment eligibility documents of new employees when completing Form I-9. During the pandemic, DHS allowed for some virtual examination and verification of I-9 documents. These flexibilities were intended to be temporary, with DHS instructing that the documents were to be physically examined in person at a later date.

That later date is now upon us, as ICE announced that after July 31, 2023, employers completing Form I-9s must physically examine documents in person for new employees. Additionally, by August 30, 2023, employers must update any Form I-9s completed by virtual means (email, fax, video, etc.) since March 20, 2020. This includes examining the documents in person and annotating the I-9 form accordingly.

Key Takeaways and Best Practices for Employers

The burden this will place on many employers cannot be overstated, but also cannot be ignored. Specifically:

- Employers should conduct an internal audit to identify all Form I-9s that were completed virtually since March 20, 2020. For those I-9s, employers must examine the documents in person by August 30, 2023, and update their Form I-9s.
- After July 31, 2023, employers can no longer rely on virtual examination of I-9 documents for any employees (whether

new hires, current employees, or remote). Employers or their authorized representatives must perform physical, in-person examination of the documents for all I-9s moving forward.

- I-9 policies and procedures must be updated to account for the end of the temporary flexibilities.
- Personnel should be trained as needed to ensure that I-9 verification is performed in a manner that is legally compliant and non-discriminatory.

Completing I-9 Forms After July 31

In 2022, the DHS published a [Notice of Proposed Rulemaking](#) for alternative procedures allowing remote document examination for Form I-9. DHS expects to publish a final rule in the Federal Register that will implement this proposal. In the meantime, employers should consider the following options to complete Form I-9 for remote employees:

- Host in-person events such as orientations or meetings where employees bring their I-9 documents for physical examination.
- Designate an authorized representative to review the supporting documents for remote employees and to complete Form I-9 on behalf of the company:
 - Companies can authorize anyone to act on their behalf for these purposes (personnel officers, HR professionals, foremen, managers, or a notary public—even a relative or neighbor of the employee), but the agent cannot be the employee for whom the company is completing the Form I-9.
 - The agent should be knowledgeable about the I-9 verification process and its requirements or be given detailed step-by-step instructions.
 - As a best practice, the employer should designate a knowledgeable human resources representative to review the Form I-9 after it is completed by the agent to ensure compliance.

Updating I-9 Forms by August 30

Employers should complete the following steps by August 30, 2023, to update Form I-9s and review documents that were previously handled by virtual means:

- Where in-person verification is not possible due to a former employee's departure, simply update Form I-9, Section 2 with a brief explanation of employment termination in the "Additional Information" box on page 2 of the I-9.
- For current employees, the same employer representative who previously reviewed the I-9 documents virtually can review the original documents in person, update the Form I-9 in Section 2 with their initials and the date of the in-person inspection, and note in the "Additional Information" box that the documents were physically examined. Example: "COVID-19 documents physically examined on [mm/dd/yyyy] by [initials]."
- If the employer representative who previously reviewed the I-9 documents virtually is unavailable to perform the in-person review of the original documents, a different representative should annotate the "Additional Information" box on the Form and also complete a new Form I-9 Section 2 attestation, then attach it to the prior Form. Example of the annotation in the "Additional Information" box: "COVID-19 documents physically examined on [mm/dd/yyyy] by [title, full name]."

For additional guidance, U.S. Citizenship and Immigration Services has published answers to [frequently asked questions](#), which can be a helpful reference for numerous situations when updating Form I-9s.

The July 31 and August 30 changes to the I-9 process for remote workers will continue to be a hot topic of discussion and enforcement by the federal government for years to come. For more information and assistance with I-9 compliance, please contact the authors of this article or any member FBT's Immigration Team or [Labor & Employment](#) Practice.

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