

Form I-9 Requirement Flexibility to End on July 31, 2023

June 20, 2023

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The U. S. Immigration and Customs Enforcement (ICE) recently announced the end of COVID-19 temporary flexibilities for Form I-9, Employment Eligibility Verification.^[1] Starting July 31, 2023, employers must complete in-person physical document inspections for employees whose documents were inspected remotely during the temporary flexibilities. Employers who have been using the COVID-19 flexibilities have until August 30, 2023, to complete the physical inspection of identity documents. The change does not impact the ability of employers to use 3rd party authorized agents to conduct the required in-person inspections.^[2]

The flexibility provisions allowed employers that are operating remotely to complete Form I-9 Section 2 document review remotely (e.g., electronically over video link, fax, or email) within three business days of hire. The flexibility provisions are for employees who are working remotely due to COVID-19 precautions “until they undertake non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier.”

Employers who conducted remote Form I-9 document review are advised to begin implementing the in-person verification of identity and employment eligibility documentation for employees who were hired on or after March 20, 2020, and who presented such documents for remote inspection in reliance on the flexibilities first announced in March 2020.

After documents have been physically inspected, the employer should add “COVID-19” and “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to Section 3 as appropriate.

A large number of employees now work remotely and are not in proximity to the employer. An authorized representative may be used for completing Section 2 of the Form I-9. Anyone other than the employee may serve as an authorized representative, subject to state law. Once the authorized representative completed Section 2, the employer must ensure that the form appears to be free of errors. The employer has liability for any paperwork deficiencies in the Form I-9 completed by the authorized representative.

Immigration laws and regulations may change over time, so it's important to consult with an immigration attorney or refer to the official sources, such as the U.S. Citizenship and Immigration Services (USCIS) website, for the most up-to-date information.

The I-9 form is used to verify the identity and employment authorization of individuals hired for employment in the United States. Previously, due to COVID-19 restrictions, the U.S. government temporarily allowed employers to inspect Section 2 documents remotely (e.g., via video conference) when completing the I-9 verification process.

Since the remote inspection option will no longer be available, employers will need to resume in-person verification procedures

as outlined in the I-9 instructions. Many third-party services are available to employers wishing to conduct inspections outside their geographic reach, employers may also use their law firms to do this.[3]

Furthermore, Employers are required to conduct a physical inspection of original documents related to previous remote I-9s. Here are some key points to consider:

1. In-person verification: Employees should present their original, unexpired documents in person to their employers or an authorized representative. The employer or representative must physically examine the documents to determine their authenticity.
2. Timing: Section 2 of the I-9 form must be completed within three business days of the employee's first day of work. During this time, the employer must review and record the information from the employee's documents on the I-9 form.
3. Acceptable documents: The employee must present acceptable documents that establish their identity and employment authorization. The USCIS provides a list of acceptable documents on the back of the I-9 form, which includes items such as a U.S. passport, driver's license, Social Security card, and permanent resident card (green card).
4. Completing the form: The employer or authorized representative should complete Section 2 of the I-9 form, including recording the document title, issuing authority, document number, and expiration date (if applicable). The employer must sign and date the certification section.
5. Annotation of compliance for prior remote I-9s: For prior completed I-9s under the remote rules Employers should annotate forms I-9 to verify the physical inspection.[4] The reverification should be added to the Additional Information field in Section 2. Best practice is to include the date and full name and title of the individual who completed verification.
6. Review of information: Employers should establish a review process of all I-9s to make sure all forms are valid, and information is entered correctly. Errors happen and can be costly for employers, a simple review process can head off a lot of issues early on.
7. Retaining and storing forms: Employers are required to retain I-9 forms for each employee and make them available for inspection by authorized government officials if requested. The forms should be stored securely and maintained for three years after the initial date of hire of the employee, or one year after the date employment ends, whichever is later. Consult the USCIS guidelines for details on retention and storage requirements.

It's important for employers to stay informed about any changes or updates to the I-9 verification process. Checking the USCIS website or consulting with an immigration attorney will help ensure compliance with the latest requirements.

[1] <https://www.ice.gov/news/releases/ice-updates-form-i-9-requirement-flexibility-grant-employers-more-time-comply>

[2] <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/complying-with-i9-and-everify-requirements-in-the-united-states.aspx>

[3] Many services have sprung up in this space that act as authorized agents for physical inspections - there are many like this out there:

https://workforce.equifax.com/solutions/i-9-anywhere?utm_source=google&utm_medium=cpc&utm_campaign=https://workforce.equifax.com/solutions/i-9-anywhere?utm_source=google&utm_medium=cpc&utm_campaign=EWS_ES_I-9-Anywhere_2023&utm_term=&utm_content=&utm_term=&utm_content=&gad=1&gclid=CjwKCAjw04yjBhApEiwAJcvNoXj_RnOCaE4EaXp9hrUXzgZSubb5HxDKKQypMMQL9nOFRrzZ3TQeBoCXFAQAvD_BwE&gclid=aw.ds

<https://dcmobilenotary.com/i-9>.

[4] [Form I-9 Examples Related to Temporary COVID-19 Policies | USCIS](#)

