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Form I-9 Remote Flexibility Ends July 31, 2023

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Temporary U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) guidance permitting businesses operating remotely due to COVID-19 to conduct remote Form I-9 document inspections is set to expire on July 31, 2023. This announcement is in line with recent statements from the Biden administration declaring that COVID-19 health emergencies will end in May.

ICE had [extended the COVID-19 remote completion flexibilities](#) for Form I-9 from Nov. 1, 2022, through July 31, 2023. The policy extension ensured that employees who, due to COVID-19 policies, do not report to a physical location on a regular, consistent, or predictable basis continued to be exempt from Form I-9 in-person verification requirements.

This temporary flexibility has been in effect since March 2020, when DHS was presumably responding to increased remote employment due to COVID-19. These flexibilities were narrowly and exclusively applied to employers and workplaces that were 100 percent remote, reflecting the agency's long-standing resistance to remote I-9 verification. DHS and ICE granted some discretion in the physical presence requirements associated with Form I-9, allowing employers to inspect documentation remotely. Employers were instructed to state "COVID-19" in Section 2 on Form I-9.

With the termination of this remote flexibility, Form I-9 completion for

intentionally remote hires must be performed in person by either the employer or an authorized representative for the employer.

Employers preparing for return to in-person work should consider reviewing any Form I-9 completed during COVID-19 for employees who were hired on or after March 20, 2020. Employers will be required to comply with the following steps for in-person verification of Form I-9 after July 31, 2023, once normal operations resume:

- All employees who were on boarded using remote verification must report to their employer within three business days for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification.
- Once the documents have been physically inspected, the employer should add “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. Employers should also enter “COVID-19” as the reason for the physical inspection delay in the Section 2, Additional Information field once physical inspection takes place after normal operations resume.
- If the person who virtually examined the documents is not the one who performs the physical inspection, the employer representative conducting the physical inspection should complete a new Section 2 and attach that to the complete remote inspection Form I-9.

Additional guidance from DHS on in-person verification should be soon to come. Barnes & Thornburg LLP will continue to monitor developments in regards to this policy alert.