



News & Types: Client Advisories

News Flash –Remote I-9 Inspection Flexibility Ends July 31

7/6/2023

Practices: Immigration

In May 2023, the U.S. Department of Homeland Security (DHS) and the U.S. Immigration and Customs Enforcement (ICE) announced that the Covid-19 flexibility regarding the physical inspection of the Form I-9, Employment Eligibility Verification, would end on July 31, 2023. As a result, employers who have been relying on this temporary flexibility to conduct remote inspection of the Form I-9 physical documents must complete all required physical examination of identity and employment eligibility documents by August 30, 2023.

Under federal law, U.S. employers must properly complete the Form I-9 for each individual they hire. The employee must complete Section 1 of the Form I-9 at the time of hire, and the employer must complete Section 2 including physically examining the identity and employment eligibility documents presented by the employee within three business days of hire. Due to pandemic-related concerns regarding physical proximity, in March 2020, ICE announced a temporary deferment of the physical inspection requirement allowing employers to remotely inspect documents for employees hired on or after March 20, 2020 until such a time when companies resumed normal operations. The expectation was that once a company resumed normal operations, the employer would complete the physical inspection of identity and employment eligibility documents within a defined time period. In addition, employers who availed themselves of this option had to maintain written documentation of their remote onboarding and telework policy for each employee.

DHS' May 2023 announcement confirmed the termination of the remote inspection flexibility on July 31, 2023, and reminds employers that for those individuals hired on or after March 20, 2020 who have been inspected remotely, employers must complete the required physical inspection of identity and employment eligibility documents by August 30, 2023. Consequently, employers should take steps to complete in-person physical inspection and of identity and employment authorization documents, and annotate the Form I-9 appropriately.

As a reminder, even prior to the pandemic employers with remote employees had the option of designating an authorized representative to act on their behalf to complete Section 2 and perform the required physical examination of the Form I-9 when it was not feasible for an employer to do so. For employers that continue to employ fully remote employees, a designated authorized representative, such as a personnel officer, foremen, agents, or a notary public, may complete and sign the Form I-9 on behalf of the employer.

If you have questions about how these changes may affect your I-9 processes, please contact your attorney at our firm.