

Mobility: Immigration alert

May 2023

United States

U.S employers must ensure compliance with Form I-9 physical inspection requirements by 30 August 2023

Executive summary

Effective 31 July 2023, COVID-19 related flexibilities for employers completing Employment Eligibility Verification (Form I-9) procedures that have been in effect since March 2020 will sunset.

A 4 May 2023 announcement from the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) clarified that all employers who have been relying on these flexibilities in completing Form I-9 will have until 30 August 2023 to physically inspect and review employees' identity and employment authorization documents and update their I-9s accordingly.

Background and analysis

On 20 March 2020, DHS announced that it would defer certain Form I-9 requirements for employers taking social distancing precautions due to the COVID-19 pandemic. The announcement allowed employers with employees working remotely or taking other physical proximity precautions to temporarily defer the physical inspection requirements associated with Form I-9 under Section 274A of the *Immigration and Nationality Act* (INA).

The announced flexibilities allowed for employers to examine employees' documents remotely (e.g., over video call, fax, or email) and document "COVID-19" as the reason for physical examination delay on Form I-9. Under the original announcement, employers were required to physically examine employees' identification and employment authorization documents within three (3) business days of resuming normal business operations and

update the Form I-9 accordingly once in-person, physical examination had occurred.

On 1 April 2021, DHS updated its Form I-9 flexibility guidance, noting that in-person inspection of employees' identity and employment eligibility documents applies only to those employees who physically report to work at a company location on any regular, consistent, or predictable basis. The updated guidance provided that any employees hired on or after 1 April 2021 working exclusively in a remote setting were temporarily exempt from the Form I-9 requirements of in-person, physical examination of identity and employment eligibility documents, until they undertake non-remote employment on a regular, consistent, or predictable basis.

DHS has consistently extended I-9 flexibilities since 20 March 2020 until now; however, their most recent announcement has confirmed that these flexibilities will end on 31 July 2023 and that employers will have until 30 August 2023 to reach compliance with Form I-9 requirements. **Once the physical examination is complete, the employer must add "documents physically examined" with the date on which the examination occurred to the Section 2 Additional Information field or in Section 3 on the Form I-9.**

What this means

As of 1 August 2023, employers are required to physically examine newly hired employees' identification and employment eligibility documentation in-person, as per Form I-9 requirements under Section 274A of the INA.



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For employees who were hired between 20 March 2020 and 31 July 2023, employers will have until 30 August 2023 to reach compliance with Form I-9 requirements. Employers who have been using temporary flexibilities will be required to conduct an in-person, physical review of employees' identity and employment eligibility documents and update employees' Form I-9 accordingly.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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EYG no. 004578-23GbI

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