

Form I-9 Requirements Flexibility Extended until December 31, 2021

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The U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) announced they have again extend flexibility relating to in-person Form I-9 compliance. As discussed in a [previous post](#), this flexibility allows employers whose workforce is working remotely to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) and section 274A of the Immigration and Nationality Act.

The policy, which was originally announced on March 19, 2020, was previously extended until August 31, 2021. Through this second extension, the policy will now remain in effect until December 31, 2021.

As explained in our [prior post](#), the policy applies only to employers and workplaces that are working entirely remotely. If there are employees physically present at the work location, no exceptions are being made for the in-person verification process.

The temporary guidance continues to provide the following:

Employers that have gathering bans or restrictions due to COVID-19 are not required to perform an in-person review of the employee's identity and employment authorization documents. Instead, employers may inspect the employee's "Section 2" I-9 documents remotely, using "video link, fax or email, etc." Employers must obtain, inspect and retain copies of the documents within 3 business days, and provide written documentation of their remote onboarding and remote work policy on the employee's Form I-9. Once normal operations resume, employers must conduct an in-person verification of any documents presented by employees who were onboarded remotely, within 3 days of a return to the work location.

In addition, on March 31, 2021, ICE updated its I-9 flexibility [guidance](#) to add an additional provision that applies to all employers. For any employees hired on or after April 1, 2021, and who will exclusively work remotely due to the employer's COVID-19 policy, the physical I-9 inspection exception described above applies to these hires. The employer must perform an in-person review of the employee's documents when the employee begins reporting to an office on a "regular, consistent, or predictable basis."

If you have a specific Form I-9 question, please contact your Mintz immigration attorney.

Authors



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