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MAY 4, 2023 • WASHINGTON, DC • COVID-19, LABOR EXPLOITATION

ICE updates Form I-9 requirement flexibility to grant employers more time to comply with requirements

WASHINGTON – The U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) announced today that employers will have 30 days to reach compliance with Form I-9 requirements after the COVID-19 flexibilities sunset on July 31, 2023. These flexibilities were first announced in March 2020 and subsequently extended throughout the COVID-19 pandemic. DHS encourages employers who have been using those temporary flexibilities to plan ahead to ensure that all required physical inspection of identity and employment eligibility documents is completed by Aug. 30, 2023.

In March 2020, ICE announced that it would defer the requirement that employers review employees' identity and employment authorization documents in the employees' physical presence, instead allowing that to occur remotely, with the expectation that physical inspection would occur within three business days after normal operations resumed. In follow-on guidance, ICE noted that employers could continue to implement the flexibilities until affected employees 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. In October 2022, DHS and ICE announced that the flexibilities would be extended until July 31, 2023. Today's announcement clarifies for employers that they have until Aug. 30, 2023, to perform all required physical examination of identity and employment eligibility documents for those individuals hired on or after March 20, 2020, and who have only received a virtual or remote examination under the flexibilities.

As noted in the March 2020 announcement, under the flexibilities, employers with employees taking physical proximity precautions due to the COVID-19 pandemic were allowed to temporarily defer physical examination of employees' identity and employment authorization documents. Instead, employers could examine the employees' documents remotely (e.g., over video link, fax, or email) and enter "COVID-19" as the reason for the physical examination delay in the Section 2 Additional Information field when physical examination took place in the future. Once the employees' documents were physically examined, the employer would add "documents physically examined" with the date of examination to Section 2 Additional Information field on the Form I-9, or in Section 3, as appropriate.

On Aug. 18, 2022, DHS issued a proposed rule that would allow alternative procedures for the examination of identity and employment eligibility documents. The public comment period closed on Oct. 17, 2022. DHS is currently reviewing public comments and plans to issue a final rule later this year.

RELATED ARTICLES

[DHS announces flexibility in requirements related to Form I-9 compliance](#)

[ICE announces extension, new employee guidance to I-9 compliance flexibility](#)

[ICE announces extension to I-9 compliance flexibility](#)

ADDITIONAL INFORMATION



The agency’s full response to COVID-19 can be viewed at [ICE.gov/coronavirus](https://ice.gov/coronavirus).

DOCUMENTS



[Proposed Rule: Optional Alternatives to Form I-9](#)

Updated: 05/05/2023

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