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ICE NEWSROOM

DECEMBER 15, 2021 • WASHINGTON, DC • STUDENT AND EXCHANGE VISITOR PROGRAM, COVID-19, LABOR EXPLOITATION

ICE announces extension to I-9 compliance flexibility

WASHINGTON — U.S. Immigration and Customs Enforcement (ICE) today announced an extension of the flexibilities in rules related to Form I-9 compliance that was initially granted last year. Due to the continued precautions related to COVID-19, the Department of Homeland Security (DHS) will extend this policy until April 30, 2022.

This extension will continue to apply the guidance previously issued for employees hired on or after April 1, 2021, and work exclusively in a remote setting due to COVID-19-related precautions. Those employees are temporarily exempt from the physical inspection requirements associated with the Employment Eligibility Verification (Form I-9) until

they 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.

On March 20, 2020, due to precautions implemented by employers and employees associated with COVID-19, DHS announced that it would exercise prosecutorial discretion to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) under section 274A of the Immigration and Nationality Act. This policy only applies to employers and workplaces that are operating remotely. If there are employees physically present at a work location, *no exceptions* are being implemented at this time for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification.

For more information, please see the [March 2020 guidance](#).

On March 31, 2021, and effective April 1, 2021, DHS provided the following update – which will still be in effect through this extension – to its Form I-9 flexibilities:

The initial flexibility announcement issued on March 20, 2020, notes that DHS will evaluate certain COVID-19 related Form I-9 completion practices on a case-by-case basis as they relate to the physical inspection of Form I-9 documentation. Accordingly, as of April 1, 2021, the requirement that employers inspect employees' Form I-9 identity and employment eligibility documentation in-person applies only to those employees who physically report to work at a company location on any regular, consistent, or predictable basis.

If employees hired on or after April 1, 2021 work exclusively in a remote setting due to COVID-19 related precautions, they are temporarily exempt from the physical inspection requirements associated with the Employment Eligibility Verification (Form I-9) under Section 274A of the INA until they 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.

Employers may be unable to timely inspect and verify, in-person, the Form I-9 supporting documents of employee(s) hired since March 20, 2020, as described above, in case-by-case situations (such as cases in which affected employees are no longer employed by the employer). In such cases, employers may memorialize the reason(s) for

this inability in a memorandum retained with each affected employee's Form I-9. Any such reason(s) will be evaluated, on a case-by-case basis, by DHS ICE in the event of a Form I-9 audit.

Going forward DHS will continue to monitor the ongoing national emergency and provide updated guidance as needed. Employers are required to monitor the DHS and ICE websites for additional updates regarding when the extensions will be terminated, and normal operations will resume.

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

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The agency's full response to COVID-19 can be viewed at [ICE.gov/coronavirus](#).

Updated: 12/16/2021

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