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

ICE announces extension to I-9 compliance flexibility

Update: April 25, 2022

The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), today announced an extension of the Form I-9 flexibilities first announced in March 2020 and updated in March 2021. On February 18, 2022, President Biden issued a notice on the continuation of the state of the National Emergency concerning the COVID-19 pandemic (“COVID-19”). Due to the continued safety precautions related to COVID-19, DHS will extend the updated flexibilities until October 31, 2022.

On March 20, 2020, in response to public health guidance and precautions related to COVID-19, DHS announced that it would exercise prosecutorial discretion to defer the physical presence requirements of the Employment Eligibility Verification (Form I-9) under Section 274A of the Immigration and Nationality Act (INA). This policy only applied to employers and workplaces that

were operating remotely. If there were employees physically present at a work location, no exceptions to the in-person verification of identity and employment eligibility documentation for Form I-9 were implemented at that time.

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.

As noted in DHS ICE's March 31, 2021 announcement, the Form I-9 flexibilities announced in March 2020 do not preclude employers from commencing, in their discretion, the in-person verification of identity and employment eligibility documentation for employees who were hired on or after March 20, 2020, and who presented such documents for remote inspection in reliance on the flexibilities first announced in March 2020.

Employers should monitor the DHS and ICE websites for additional updates regarding the status of Form I-9 completion flexibilities.

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 [DHS guidance on Form I-9 flexibilities](#).

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.

RELATED ARTICLES

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

RELATED INFORMATION



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

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