

End of Pandemic Era I-9 Flexibilities

As predicted in our [previous article](#), an employer's ability to complete the Form I-9 process through the remote inspection of identity and employment eligibility document(s) is ending, at least for now. U.S. Immigration and Customs Enforcement (ICE) [announced](#) that employers have until August 30, 2023, to ensure completion of an in-person physical inspection of any identity and employment eligibility document(s) that they had previously only reviewed remotely (e.g., via video conference, email, facsimile, etc.) pursuant to the COVID-19-era flexibilities previously granted by ICE.

Employers are therefore encouraged to immediately and carefully review all Form I-9s for current employees who were hired on or after March 20, 2020, to determine if any forms were completed using remote inspection of identity and work authorization document(s) and, if any are located, to contact affected employees to schedule an in-person physical inspection of their documents. Affected employees may choose to provide the same document(s) provided for their original I-9 process as long as the document(s) remain(s) unexpired. They may also choose to provide any other valid identity and work eligibility document(s) listed on the Form I-9 List of Acceptable Documents. As affected employees submit their documentation for in-person physical inspection, their I-9s should be amended to reflect in-person review. If the employee provides the same document(s) as were provided for the previous remote inspections, then employers may update Section 2 of the affected employee's Form I-9 in the "Additional Notes" box with a notation indicating "Physical inspection completed on," the date of inspection and the name and contact details for the individual who completed the inspection. If the employee provides different documentation, the new document information may be listed in the appropriate List A or List B and List C columns, with appropriate notes next to each change and similar notation in the "Additional Notes" box.

The in-person physical inspection may be completed by staff for the employer or another individual appointed and approved by the employer to complete the in-person physical examination of the document(s), even if they are unpaid and otherwise completely unaffiliated with the employer. Employers are cautioned, however, to carefully note that they remain fully responsible for any errors or omissions committed by any outside individual they authorize to complete the in-person physical examination. Employers will therefore want to carefully consider the qualifications and reliability of any individual they authorize to conduct

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physical document inspections on their behalf.

While the U.S. Department of Homeland Security has issued a proposed rule that would allow alternative procedures for the examination of identity and employment eligibility documents, including a remote inspection option for some types of employers, the rule remains under review and may not be finalized for some time, if ever.

Employers with questions regarding the Form I-9 process or in-person physical inspection should contact Reinhart attorney Ben Kurten.

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