Engage PEO Client Alert

DHS Ends Form I-9 Flexibility for Remote Workers

WHAT'S NEW: On May 5, 2023, the Department of Homeland Security (DHS) confirmed that the COVID-19 temporary flexibilities providing for remote inspection of Form I-9 documents will not be extended beyond July 31, 2023. **The DHS has given employers until August 30, 2023, to complete the physical inspection of Form I-9 documents for all employees onboarded and verified remotely**.

WHY IT MATTERS: The most recent COVID-19 Form I-9 flexibilities allow remote inspection of documents until employees resume in-person employment on a "regular, consistent, or predictable basis" or until the temporary flexibilities are terminated - whichever is sooner.

For employers that have resumed normal operations and whose employees have returned to the office, physical inspection of documents may already be complete. But, for many employers remote work has continued and is expected to continue indefinitely. Depending on an employer's post COVID-19 workforce, completing physical inspection of documents may require some planning.

WHAT EMPLOYERS SHOULD DO: Employers should identify all employees whose Form I-9 documents were verified remotely and implement procedures to ensure physical inspection of documents by August 30, 2023. It is recommended that employers consider the following to prepare for the upcoming change:

- Communicate to employees what needs to be done and why.
- Take care to review documents in a consistent and non-discriminatory manner.
- **Employees Working in the Employer's Office**: Employers should begin scheduling times for employees to present their Form I-9 documents for physical inspection.
- **Remote Employees (in same city as employer)**: Employers should begin scheduling times for employees to present their Form I-9 documents for physical inspection.
- **Remote Employees (out of city/state)**: Employers should designate an authorized representative to physically inspect the Form I-9 documents. Depending on who you designate, it may be useful to create an instruction sheet for the authorized representative, so that they know exactly what is required. [Note: California limits authorized agents to licensed attorneys, individuals authorized under federal law to provide immigrations services, and individuals qualified and bonded as an immigration consultant. Connect with your HR Consultant for further information]

In addition, employers should make sure their HR teams understand the processes for updating the Form I-9 once the physical inspection is complete.

- If the same person who completed the remote inspection is completing the physical inspection, then the individual should note "COVID-19" and "documents physically examined" in the additional information field of Form I-9 Section 2 along with the date of the inspection and the initials of the person reviewing.

- If the person reviewing the physical documents is not the same person who remotely reviewed the documents, then the individual should note “COVID-19” and “documents physically examined” in the additional information field of Form I-9 Section 2 along with the date of the inspection and the full name and title of the person reviewing.
- If a previously inspected document is now expired, then the employer should review the document to satisfy the physical inspection requirement. *[Note: if the document is one that needs to be reverified, then reverification will still need to be performed in accordance with the Form I-9 requirements]*
- If an employee wants to present different documents, they may do so. The employer should complete a new Section 2 and attach it to the original Form I-9.
- If the employee separated before physical inspection was performed, include an explanation and date of separation in the additional information field of Section 2.
- If the physical inspection is being performed by an authorized representative, employers should have processes in place for reviewing the Form I-9 to ensure that it is completed properly. Employers will still be held responsible for errors made by an authorized agent.

Please reach out to your Engage Human Resources Consultant if you have any questions concerning this alert or other H.R.-related matters.

For more information about the Form I-9 and its requirements, there is an upcoming Engage webinar, About Form I-9 (Everything you ever wanted to know ... and more).