



ICE Clarifies And Extends “Relaxed” I-9 Rules Until End Of Year

Insights

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Federal immigration officials announced on November 18 that the relaxed rules for completing I-9 forms has been extended until December 31, 2020. Officials also recently issued guidance that should further help employers navigate these unprecedented times. What do employers need to know about these developments?

Relaxed Rules, Explained

Just after the onset of the COVID-19 pandemic, the Department of Homeland Security (DHS) announced that it was temporarily relaxing its I-9 rules. Although this relaxation was originally set to expire in June, it has been since extended several times. The November 18 announcement once again extended this date, this time to the end of the year.

The relaxed rules allow for virtual inspection of acceptable documents where newly hired workers (and employees with expiring temporary work authorizations) are unable to present their documents in person due to quarantine, stay-at-home orders, and other COVID-19-related business closure reasons.

The timing of filling out Form I-9 was not altered. Newly hired employees are still required to fill out Section 1 of the Form I-9 no later than their first day of employment, and employers are still required to fill out Section 2 of the I-9 no later than three business days after the employee’s first day of employment.

Rules Still Apply In Some Situations

But the rules relaxation was not absolute. DHS stated that, for employers with employees “physically present” at a work location, no exceptions would be implemented for in-person verification of identity and employment eligibility documentation. However, DHS indicated that if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, the agency “will evaluate this on a case-by-case basis.”

Given this, the best practice to follow if your workplace has employees present remains conducting in-person document reviews by an employee trained in I-9 protocols (“employer representative”) or by a third-party (“authorized representative”). The employer representative or authorized representative should meet with the employee in person, either at the workplace or a convenient location, examine the documents provided, and fill out the employer’s portion of the I-9.

Additional Guidance

For those employers that use the remote document inspection method, you are required to visually inspect, in person, those employee documents presented virtually by the employee once you return to “normal operations.” This must be done within three business days.

However, the undefined term “normal operations” gave rise to a number of questions as to what would constitute a such a “return to normal operations.” Also unknown: whether new hires and current employees with expired temporary work authorizations would be required to make a special trip to your place of business solely to show their documents.

Immigration and Customs Enforcement (ICE) recently offered additional guidance on these, and other, questions:

- Employees who have undergone remote I-9 document inspection do not have to make a special trip to the workplace solely to complete the visual inspection requirement. Rather, within three business days of the employee “physically returning to the workplace,” the employee must produce the documents they produced for remote inspection to the company employee who inspected them. We interpret this to mean that if the employee is instructed to physically come to the workplace for any work-related reason (i.e. training, work-related meetings, part-time/temporary in-person work assignments), that likely will trigger the in-person document review requirement. While the DHS has indicated it will review such circumstances on a case-by-case basis, the best practice is to conduct the in-person review the first time you call the employee into the workplace for work.
- The employer representative who examined the documents remotely and who then inspects them in person must write in the Additional Information field (or in Section 3, if appropriate) “documents physically examined,” and must sign and provide the date the documents were examined in person.
- If the original employer representative is no longer employed or otherwise unavailable to conduct the document examination, the new employer representative conducting the in-person inspection should fill out a new page 2, Section 2, and attach it to the original I-9.
- If one or more of the documents has expired since the original remote I-9 was completed, so long as the document was valid at the time the original I-9 was created, it remains an acceptable document.
- If the document(s) is/are lost or unavailable, the employee should complete a new I-9 and present any combination of List A or List B and C documents the employee wishes. The employer representative should indicate the same hire date as shown on the original I-9, and attach the new I-9 to the original one. The employer representative should indicate in the Additional Information field that the new I-9 was completed because the original documents were unavailable.

We will continue to monitor the government's position on these temporary rules and will provide updates with future developments.

Related People



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