

ICE EXTENDS “RELAXED” I-9 DOCUMENT INSPECTION RULES THROUGH MAY 31 AND CLARIFIES REMOTE WORKER RULES FOR NEW HIRES

Insights

Apr 5, 2021

As previously reported, U.S. Immigration and Customs Enforcement (ICE) has relaxed its rules regarding the in-person inspection of employee documents when filling out a Form I-9, and the agency recently announced that these relaxed rules have been extended until May 31, 2021. The continued flexibility offered to employers is in response to the COVID-19 pandemic and the prevalence of workers still doing their jobs on a remote basis.

In its announcement, ICE also announced that employees hired **on or after April 1, 2021** who work exclusively in a remote setting due to COVID-19 related precautions will be exempt from the I-9 physical inspection requirements until they undertake non-remote employment on a “regular, consistent, or predictable basis or until the flexibility policy is terminated which is earlier.”

What Do Changes Mean?

This is a significant change from ICE’s prior announcements. Until now, the “relaxed” rules applied only where (i) workplaces are shut down or (ii) where new hires and employees needing to update temporary work authorizations are subject to quarantine or no-travel orders. With this latest announcement, anyone

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Immigration

hired to exclusively work remotely due to COVID-19 can provide acceptable documents remotely and will not have to physically show their documents until they are regularly scheduled to come into work, or until the policy is terminated by ICE.

Unfortunately, ICE's announcement does not clarify when those hired before April 1, 2021 must have their documents physically inspected. For them, where an employer has employees "physically present" at a work location, ICE has previously indicated that no exceptions would be implemented for in-person verification of identity and employment eligibility documentation. ICE noted that it "will evaluate this on a case-by-case basis."

For those employees hired under the relaxed rules prior to April 1, we recommend erring on the side of caution and having them undergo physical document inspection when operations are reasonably staffed and where there are no COVID-19 quarantine or travel ban issues in play. For more details, [see our prior Insight](#).

What's Next?

There is no way to know if ICE is going to extend these rules after May 31, 2021, and if so, for how long. Even though these rules are relaxed, it is important to follow them closely. ICE is anticipated to significantly expand its I-9 inspection efforts once the pandemic nears its end. President Biden has made it clear that I-9 enforcement will play an important role in his administration's attempt to overhaul the immigration system, as it is one thing both parties can agree upon. Given that fines for I-9 errors can run in the thousands of dollars per I-9 and the cost of a self-audit is relatively inexpensive – not to mention helps ensure compliance moving forward – now is a good time to consider an I-9 review. We'll continue to monitor the situation and provide updates as warranted, so [you should sign up to receive our Insights](#) direct to your inbox. If you have questions, contact your Fisher Phillips attorney or any attorney in our [Immigration Practice Group](#).

