



Workplace Immigration Officials Extend “Relaxed” Remote Work I-9 Rules Into 2022

Insights
12.21.21

Federal workplace immigration officials recently announced that “relaxed” I-9 rules have been extended until April 30, 2022, ensuring that employers can inspect I-9 documents for certain employees working remotely due to COVID-19 restrictions by way of camera or fax. U.S. Immigration and Customs Enforcement (ICE) noted that this extension, as previously reported by Fisher Phillips here, will ensure that the guidance for employees hired on or after April 1, 2021, and working exclusively in a remote setting due to COVID-19-related precautions will remain in place for the next several months. What do employers need to know about this December 15 announcement?

Overview

Employees who qualify for these relaxed rules 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. When an affected employee commences “non-remote employment on a regular, consistent, or predictable basis” the employer must verify the employee’s documentation in person within three business days.

For a full summary of the remote document review process and how to perform in-person inspections upon a return to normal operations, please refer to our most recent Insight for step-by-step instructions.

What if the Remote Employee Leaves Employment Before We Have a Chance to Inspect Their I-9 Documents in Person?

In its announcement, ICE also provided the following guidance: “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, . . .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.”

When a government agency announces a “case by case” policy, this is of little comfort to employers. We suggest that employers err on the side of caution and have remote new hires’ Form I-9

we suggest that employers err on the side of caution and have remote new hires Form I-7 documentation physically inspected by an authorized representative retained by the employer for that purpose, unless COVID-19 restrictions render that option unadvisable.

You should carefully coach authorized representatives on how to correctly fill out page 2 of the I-9, as any errors or omissions will be attributed to the employer. In the alternative, you should monitor remote employees' visits to the workplace and conduct the in-person follow-up document review as early as possible.

What's Next?

Given that fines for I-9 errors can run in the thousands of dollars per I-9, the cost of a self-audit is relatively inexpensive, and helps ensure compliance moving forward. Now is a good time to review your I-9s for compliance, and Fisher Phillips is standing by to help.

Fisher Phillips will continue to monitor developments will provide additional guidance as it becomes available. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Immigration Practice Group](#).

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