

Insights, News & Events

EMPLOYERS MAY CONTINUE TO USE CURRENT I-9 FORM AND REVIEW EMPLOYMENT DOCUMENTS REMOTELY ... FOR NOW

Insights
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Due to ongoing COVID-19 concerns, employers will have the flexibility to remotely review employment documents for I-9 purposes in some circumstances until July 2023 — and they should keep using the current Form I-9 even though it was set to expire at the end of the month, according to two important announcements this week from the Department of Homeland Security (DHS). Here's what you should know as we wait for additional DHS guidelines and prepare for anticipated changes.

Keep Using the Current Form I-9 — But Stay Tuned for Further Guidance

DHS notified employers that they should continue to use the current I-9 — which has an expiration date of October 31, 2022 — until further notice. So, stay tuned for additional information, as we will provide an update when DHS publishes its new Form I-9, associated instructions, and effective date.

Timely compliance will be critical, since failing to use the current version of Form I-9 can result in administrative penalties. You should be prepared to take immediate action and discard the current version when the new one goes into effect.

Service Focus

Immigration

Relaxed Document Inspection Rules Remain in Play in Limited Circumstances

Due to continued safety precautions related to COVID-19, DHS announced that it will extend its updated I-9 flexibilities until July 31, 2023. [As we previously reported](#), since early on in the COVID-19 pandemic, USCIS has allowed employers to remotely review — by Zoom, video chat, FaceTime, fax, or other electronic means — the identity and work-authorization documents that are necessary to complete employees' I-9 forms during the hiring and reverification process. These “relaxed” rules have applied in the following situations:

- When workplaces are temporarily shut down due to the pandemic; or
- When new hires and employees who need to update temporary work authorizations are subject to quarantine or “no travel” orders.

Under these rules, employers must eventually inspect the relevant documents in person, but only if an employee stops working remotely and begins to report to the employer's physical location on a regular, consistent, or predictable basis.

A Sign of Changes to Come?

This extension of the relaxed rules aligns with recent DHS efforts to kickstart the rulemaking process for a permanent protocol on remote document review. Fisher Phillips has reported on [this potentially game-changing development](#), and we see the latest extension of the relaxed document review rules as more proof that DHS is dedicated to creating a permanent remote document examination rule. If implemented, the rule would allow employers to hire workers in far-flung locations, inspect their documents remotely, and eliminate the current requirement of in-person review by a company employee or authorized representative.

As always, we will continue to monitor these developments and provide additional guidance as it becomes available. Make sure you are subscribed to the [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 in our [Immigration Practice Group](#).