

Heads Up, Employers: Remote I-9 Document Verification Set to Terminate on July 31, 2023

Insights

June 13, 2023

Following the long-awaited announcement that the federal COVID-19 public health emergency has officially come to an end, there's a major shift on the horizon for the process of onboarding employees. On May 5, 2023, the U.S. Department of Homeland Security (DHS) announced the end of the temporary pandemic-era flexibilities that had allowed employers to remotely verify and inspect their new employees' I-9 forms and supporting documents.

While these I-9 verification flexibilities officially sunset on **July 31, 2023**, employers will have a 30-day grace period until **August 30, 2023** to complete all required physical inspections of employee I-9 forms and supporting documents.

Key Takeaways

- For any employees whose documents were inspected remotely while the verification flexibilities were in effect (March 20, 2020 to July 31, 2023), their documents are due for in-person inspection. These in-person inspections need to be completed by **August 30, 2023**.
- For all new employees with start dates in the month of August, ensure their documents are inspected in person by the earlier of **August 30, 2023 or within 3 business days of their date of hire**. However, as a best practice, it's wise to start conducting these in-person inspections immediately.

- For any new employees with start dates on or after August 31, 2023, ensure their documents are inspected in person within 3 business days of hire.
- A new rule is under development that may allow the DHS Secretary to authorize alternatives to in-person inspections of I-9 documents, which would give employers more flexibility in onboarding remote employees.
- In the meantime, remember that employers can use “authorized agents” to step in and perform physical I-9 inspections, in lieu of performing the physical inspections themselves.

Looking Back at DHS’s Prior Flexible Inspection Policy

The prior, flexible policy allowing employers to remotely inspect I-9 documents was issued in March 2020, in response to the COVID-19 pandemic and the resulting need to shift to remote employment procedures. As with most pandemic-era rules, the policy was always meant to be temporary. Upon announcing it, U.S. Immigration and Customs Enforcement (ICE) communicated the expectation that physical inspection of I-9 documents would occur within three business days after normal operations resume. In the meantime, employers could examine their new employees’ documents remotely (e.g., over video link, fax, or email) and cite “COVID-19” as the reason for the physical examination delay under Section 2 or 3 of the employee’s I-9 form, as appropriate. In October 2022, DHS and ICE announced that the I-9 flexibilities would remain in place and employers could continue to perform remote inspections of I-9 documents until **July 31, 2023**.

Employers’ Options as the Flexible Inspection Policy Comes to an End

As the temporary policy allowing for remote I-9 inspections officially comes to an end on July 31, 2023, employers will have 30 days therefrom, or until **August 30, 2023**, to complete an in-person inspection of all current employees’ I-9 documents to the extent those documents have not yet been physically inspected. This includes any employees who were recruited and whose I-9 documents were remotely inspected while the temporary policy was in place from March 20, 2020 to July 31, 2023. (Note that for employers who use E-Verify, the reversion to physical inspections of I-9 documents doesn’t require any changes to E-Verify cases for employees whose previous I-9 documents were remotely inspected.)

What about employers with remote and distributed workforces outside the reach of their company's HR team? Fortunately, the I-9 verification regulations provide some options for this.

Specifically, the regulations and guidance allow employers to use the services of an "authorized representative" to complete a physical review of I-9 documents. This "authorized representative" can be essentially anyone, including the employee's family member, friend, or roommate. This gives employers a lot of flexibility in designating an "authorized representative." The authorized representative follows the same inspection process that a HR professional would. They simply review the employee's I-9 form and supporting documents, confirm the documents support the employee's identity and work eligibility (e.g., by confirming the employee's ID matches their name and that their work authorization document is accurate and valid), and sign the attestation at Section 2 of the I-9 form. After doing so, the authorized representative sends electronic or physical copies of the I-9 form and supporting documents to the employer. Finally, the employer then inspects those copies to conduct a secondary verification of the I-9 documents.

Unsurprisingly, a number of companies have emerged to help employers facilitate this process. Those companies also make use of the "authorized representative" option by, for example, helping the employer and new employee select a family member or friend as the authorized representative and then walking the representative through the I-9 verification process.

Potential Future Changes for I-9 Verification on the Horizon

While the pandemic-era remote I-9 verification policy may be coming to an end, permanent changes allowing for alternatives to in-person I-9 verifications are in the works. In a stated effort to "provide employers with more flexibilities, and in recognition of many employees' changing work environments and advances in technology," in August 2022, DHS proposed a new rulemaking that would permit the DHS Secretary to authorize alternative I-9 document examination procedures with respect to some or all employers, including methods to use in lieu of physical inspections, upon the Secretary's determination that such procedures offer an equivalent level of security. DHS is currently reviewing public comments that were submitted in response to the proposed rulemaking and plans to issue a final rule later this year.

We will continue to monitor developments and provide additional guidance as it becomes available. If you have any questions about this update, please contact your

Gunderson attorney.

Related Services

Employment & Labor

Featured Insights

CLIENT NEWS

Anduril Announces Acquisition of Klas to Advance Tactical Edge Computing and Communications

FIRM NEWS

Gunderson Dettmer Commemorates 2025 Asian American and Pacific Islander Heritage (AAPI) Month

CLIENT NEWS

Prosus Leads US\$7.25M Financing of Zapia

CLIENT NEWS

Brazilian Carbon Capture Company Mombak Announces \$30M Financing

CLIENT NEWS

Latin American Fintech Clara Announces \$80 Million Financing

CLIENT NEWS

Point72 Leads \$200M Series C of Apex

CLIENT NEWS

Africa B2B OmniRetail Announces \$20M Financing

CLIENT NEWS

Glacier Announces Series A Financing to Expand Robot Recycling Fleet

CLIENT NEWS

Dataminr Announces \$100M Investment Led by Fortress Investment Group

CLIENT NEWS

Omnidian Announces \$87M Series C for Renewable Energy Performance

INSIGHTS

Splitting the Pie: How Savvy Founders Divide Ownership and Navigate Other Founder Equity Decisions

CLIENT NEWS

Chainguard Announces \$356 Million Series D Led by Kleiner Perkins and IVP