

## ComplianceHR - PolicySmart

### DHS/ICE Extends I-9 Remote, Virtual Verification until July 31, 2023

Posted October 13, 2022 - On October 11, 2022, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) announced a nine-month extension until July 31, 2023, of the policy allowing remote, virtual verification of the documentation required for a Form I-9 when a workforce is working remotely. It is unknown if this extension will be the last one.

This policy began on March 20, 2020, when due to COVID-19 precautions, DHS announced it would exercise discretion for all new hires since that date to defer the physical presence requirements associated with the Form I-9 pursuant to the Immigration and Nationality Act (INA). The original period was to expire on May 19, 2020. Since then, it has been extended on numerous occasions.

DHS's original temporary policy defers for employers the requirements to review Form I-9 documents in person with new employees where employers and workplaces are operating totally remotely due to COVID-19. In these situations, employers may inspect Section 2 documents remotely through a virtual connection (*e.g.*, video link, fax, or email). Then, employers may enter "COVID-19" as the reason for the physical inspection delay in the Section 2 "Additional Information" field.

In this extension as well as several previous extensions, DHS/ICE relaxed the definition of a remote employee and stated:

If employees hired on or after April 1, 2021 work exclusively in a remote setting due to COVID-19 related precautions, they are temporarily exempt from the physical inspection requirements associated with the Employment Eligibility Verification (Form I-9) under Section 274A of the INA 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.

Once the National Emergency ends or normal operations resume, all employees onboarded using remote verification, must report to their employer within three business days for in-person physical verification of their identity and employment eligibility documentation. Many immigration attorneys believe that DHS will ultimately realize this three-day rule will be impossible for many employers that hired hundreds or thousands of remote employees to reach; thus, it will either scrap it or modify it. This belief is buttressed by DHS's requesting comments by October 17, 2022, on a [possible permanent remote, virtual I-9 verification process](#).

DHS stated, in recent extensions, employers are encouraged to begin, "at their discretion, the in-person verification of identity and employment eligibility documentation for employees who were hired on or after March 20, 2020, and who presented such documents for remote inspection in reliance on the flexibilities first announced in March 2020."

During an in-person physical inspection, the employer must note certain information, discussed below, on Section 2 of the Form I-9. USCIS and ICE advise if the same employer representative reviewed the documents remotely and in person after resumption of normal operations, they should note "COVID-19 Documents Physically examined on (date) by (name)" in Section 2 "Additional Information" field. However, if the person, who virtually examined the Employment Authorization and identification document(s), is not available to conduct the physical inspection, ICE advises to have the employer representative who is conducting the physical inspection complete a new Section 2 of the Form I-9 and attach that to the complete remote inspection Form I-9.

Employers with questions about this process should consult counsel.

*This content is from Bruce Buchanan, [DHS/ICE Extends I-9 Remote, Virtual Verification until July 31, 2023](#),  
Little ASAP (October 12, 2022).*