

updated June 12, 2023

Form I-9 COVID Flexibility (Updated)

In the early days of the COVID-19 pandemic, the Department of Homeland Security (DHS) announced temporary flexibilities for employers in connection with the requirements to inspect documentation needed to complete Form I-9 (Employment Eligibility Verification). This included both the flexibility to accept certain expired documents and the flexibility to inspect documents remotely. While the temporary policy to accept certain expired documents has ended, DHS has extended the updated flexibilities with regards to remote inspection of documents until July 31, 2023.

Remote Inspection of Documents

In March 2020, DHS announced temporary guidance that allowed for the physical presence requirements associated with the completion of Form I-9 to be deferred. The guidance allowed “employers with employees taking physical proximity precautions due to COVID-19” to inspect required documents remotely (e.g., by videoconference or e-mail), rather than inspecting those documents in the “physical presence” of the employee.¹ Such flexibility would extend until the employer resumed normal operations, at which point, the employer would have three business days to re-examine the required documents in-person.

Additional guidance was issued in April 2021 that clarified that employers were only required to physically inspect the Form I-9 documentation of employees who “physically report to work at a company location on any regular, consistent, or predictable basis.”² Employees working remotely remain exempted from in-person inspection of their Form I-9 documentation 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.”³

The policy is currently set to expire **July 31, 2023**⁴ due to the continued safety precautions related to COVID-19. Employers should monitor for updates on further extensions and should prepare to resume in-person inspection of Form I-9 documents when the policy expires.

¹ <https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>

² *Id.*

³ *Id.*

⁴ <https://www.ice.gov/news/releases/ice-announces-extension-i-9-compliance-flexibility-3> .

In addition, employers who previously resumed in-person work should ensure that they have examined physical copies of any I-9 documents, which were originally examined remotely during the pandemic and have updated their records accordingly.

This alert is meant to provide general information only, not legal advice. If you have any questions about this alert please contact Jonal Hendrickson at jhendrickson@lawyersalliance.org or visit our website at www.lawyersalliance.org for further information. To become a client, visit www.lawyersalliance.org/becoming-a-client.

For her assistance in updating this Legal Alert, Lawyers Alliance would like to thank Jenny Dai, a Legal Extern from Davis Polk. Lawyers Alliance would also like to thank former staff attorney Veronica Aksu for drafting the original legal alert.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations and social enterprises that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits, and communities, Lawyers Alliance for New York helps nonprofits to provide housing, stimulate economic opportunity, improve urban health and education, promote community arts, and operate and advocate for vital programs that benefit low-income New Yorkers of all ages.