

Back to the Past: In-Person Document Inspection for I-9 Forms Resumes

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The Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE) is ending employers' ability to remotely inspect I-9 documents on July 31, 2023. Employers will have an additional 30 days, until August 30, 2023, to ensure that all required physical inspection of identity and employment eligibility documents is completed.

All U.S. employers must complete a form I-9 for every employee working in the U.S., regardless of the employee's citizenship status. The employee must complete Section 1 of the I-9 on or before their first day of employment and provide documents to the employer proving U.S. employment authorization and identity within three days of starting employment. For an overview of the I-9 compliance process, please review our [guide](#), previously posted on the Quirky Questions blog. Generally, this process must be completed in-person to permit the employer to "physically" inspect the documents, as required by the statute and regulations.

During the COVID-19 pandemic, ICE recognized that providing these documents in person could be impossible, given that many states and workplaces shut down. In March 2020, the U.S. Department of Homeland Security (DHS), in cooperation with ICE, announced that employers could inspect the employee's I-9 documents remotely if these employees were working remotely because of the pandemic. This waiver of the in-person inspection was temporary and always required that employers eventually review these documents in-person. In addition, the waiver was never available to ordinary field or remote employees who were not working remotely because of the pandemic.

As noted in our earlier guidance, ICE announced additional extensions during which employers could inspect documents remotely. With the Biden Administration's announcements to the end of the Public Health Emergency associated with the COVID-19 pandemic, ICE also announced that the remote inspection flexibility will end on July 31, 2023, and employers will have a 30-day grace period to review all previously

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remotely inspected documents.

With the end of the remote inspection policy, employers must return to their I-9 physical document-inspection protocol as soon as possible to avoid any compliance issues on August 30th. It would be wise to re-educate onboarding personnel on inspecting I-9 documents in-person and completing the I-9 form to avoid common compliance issues, such as:

- Asking for too much information, such as whether the person is a U.S. citizen;
- Accepting documents that do not satisfy the employer's obligation, such as accepting a USCIS receipt notice when the actual approved document is required;
- Not having the right combination of documents when the employee should present both an identification and a work-authorization document;
- Not correcting employee errors, such as checking an incorrect box;
- Failing to sign and date the form, or failing to follow up on missing or expired documents; and
- Receiving a letter from the Social Security Administration noting an error with the employee's name and Social Security Number, and then failing to respond to the letter.

Inaccurate I-9 forms can also become a liability for mergers and acquisitions. The consequences can be quite severe, delaying or shelving the transaction until the company brings all I-9 forms into compliance with the laws and thereby guarantee the absence of any liability due to noncompliance. Finally, because ICE can decide to audit a company's I-9 forms at any time, it is extremely important that employers start taking extra precautions with inspecting documents and completing the forms properly now. We outlined best practices for auditing I-9 forms during a webinar earlier this year.

Companies returning to in-person document inspection amid normal operations should take the time to understand the I-9 process and review supporting I-9 documents completed over the past couple of years for compliance. Companies in the midst of a merger or acquisition should inspect current I-9 files and ensure compliance going forward.

Dorsey's immigration team is ready to assist employers audit I-9 files before ICE. Embrace the end of all-things (well, most things) pandemic related and start the second half of 2023 by being ready to transition back to in-person reviews of employee I-9 documents.