End of I-9 Remote Flexibility Looms

As of July 31, 2023, remote inspection of Form I-9 will no longer be allowed. Create a plan on how in-person inspection will take place.

Published June 29, 2023



Anyone who has worked in the U.S. knows that they can expect to complete Form I-9 at the very start of their employment. Since 1986, this Employment Eligibility Verification Form has collected basic employee data as well as required documentation, like an employee's U.S. passport, driver's license, and Social Security card. Used to verify who an employee is and that they are authorized to work in the United States, the collection of this documentation has long been an in-person requirement. Employees had to appear in the employer's presence with their documentation ready. Like many things we thought were here to stay, this all changed with the arrival of the COVID-19 pandemic, and a new Form I-9 reality settled in. With employees no longer coming into work, the in-person requirement was no longer going to be feasible. In March 2020, the U.S. Immigration and Customs Enforcement (ICE) allowed for the temporary deferral of the requirement for employers to review Form I-9 Section 2 identity and employment authorization documents in an employee's physical presence. Since then, employers have been able to use this flexibility and inspect required documents remotely. However, the current flexibility for employers to remotely inspect Form I-9 documents for

onboarding new hires will soon be coming to an end, and it's time for employers to prepare for in-person inspection once again. As of July 31, 2023, remote inspection will no longer be allowed. In addition, employers must go back retroactively and perform in-person document examinations by August 30, 2023, for employees whose documents were inspected remotely. In-person inspection of previous hires' documents will be a large undertaking for some employers, who may have hired hundreds or thousands of employees using remote inspection, especially since many employees live and work remotely. Immigration law allows employers to use designated representatives to complete Section 2 of Form I-9. That representative can be someone living in the remote worker's city and not associated with the employer, such as the employee's adult family member or friend. However, it cannot be the employee themself. When an employer examines the documentation in person that was previously examined remotely, they must add "documents physically examined" and the date of examination in the "Additional Information" box in Section 2, or in Section 3, as appropriate. If an employer representative who did not do the remote inspection completes the new, physical inspection, a new Form I-9 Section 2 should be completed and attached to the old Form I-9. So, if you have yet to add "retroactive Form I-9 in-person inspection" to your to-do list, now may be a good time to get started. Figure out a plan on how that in-person inspection will take place, whether it means bringing employees into the office or having designated representatives take care of it wherever the employees now find themselves. Our new remote work world must still find a way to fit itself into old I-9 requirements.

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