

August 30, 2023 Deadline for In-Person I-9 Verification of All Remote-Verified Employees

During the COVID-19 pandemic, the U.S. Immigration and Customs Enforcement (ICE) implemented COVID-19 employer flexibilities for verifying employment eligibility. Normally, employers are required to conduct in-person examinations of an employee's completed Form I-9 and required documents showing their identity and authorization to legally work in the U.S. In light of the coronavirus public health emergency, the federal government implemented flexible measures that temporarily exempted employees hired on or after March 20, 2020, from Form I-9's physical inspection requirements.

The U.S. government declared that the federal COVID-19 public health emergency ended on May 11, 2023. As such, ICE announced that the temporary COVID-19 flexibilities for remote I-9 verification will end on July 31, 2023. Employers must complete in-person physical document inspections by August 30, 2023, for all employees whose documents were inspected remotely during the temporary flexibilities period. Even if a company began operating remotely during COVID-19 and/or is not requiring employees to return to the workplace, the employer is required to conduct the in-person document inspection for each remote-verified employee.

The compliance deadline is clear, but employers may have questions regarding what they need to do or how to handle in-person I-9 verifications. Here is information related to some frequently asked questions about the end of the temporary COVID-19 flexibilities for remote employment verification.

What is the process for in-person verification of remote-verified employees?

By no later than August 30, 2023, all remote-verified employees must report to their employer (or the employer's authorized representative) for in-person verification of their identity and to present their original employment eligibility documentation. At that time, the employer is required to physically examine the employee's original identity and work authorization documentation in the presence of the employee.

Once the employer reviews the documentation, the employer must annotate the original Form I-9 on Section 2 in the Additional Information field (under the remote inspection notations made at the time the employee was remote-verified) with the following:

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- the words “COVID-19”;
- the words “Documents physically examined on” followed by the date the documents were physically examined; and
- the name of the person who physically examined the documentation.

What if the employee presents different documentation at the in-person examination?

If the employee presents acceptable documents for in-person inspection that are different from the ones they presented for remote inspection, then the employer may either:

- *Option 1:* Complete Section 2 on a new Form I-9 and attach it to the Form I-9 used for remote inspection (recommended by the Department of Homeland Security (DHS)); or
- *Option 2:* Provide the document title, document number, issuing authority, and expiration date (if any) of the new document in the Additional Information field on Section 2 of the original Form I-9 and notate that the employee presented this document at physical inspection.

If the reason the documents are different is because the employee has a different immigration or U.S. citizenship status or no longer has the original document presented for remote inspection, then for Option 1 above, the employer would notate in the Additional Information field that the employee changed their immigration status. Alternatively, the employer may follow Option 2 above.

What if the employee presents expired documentation at the in-person examination?

If a document was not expired during remote inspection but is expired at the time of the physical inspection, the employer need not request a new document. So long as the employee’s document was unexpired at the time of remote inspection, the employer can proceed with the physical examination of the documentation to determine if they reasonably appear to be genuine and relate to the employee presenting it.

What if an employee stopped working before the physical inspection?

If an employee separated employment before the employer was able to conduct an in-person physical examination of the documentation, the employer should include an explanation in the Additional Information field on Section 2 of the Form I-9 and also include the date of the employee’s separation of employment from the employer.

What if an employee refuses to physically appear for an in-person verification?

It is unlawful for an employer to employ any individual who the employer knows is not authorized to work in the U.S. or who does not fulfill Form I-9 documentary requirements. As such, if a remote-verified employee refuses to meet for an in-person verification by the August 30, 2023 deadline, then that employee is not eligible to work. If an employee works in a different city or state than the employer, or where it is geographically challenging to appear in-person at the employer’s location, employers may choose to use an authorized representative located near the employee to physically examine the required documentation and fill out the employer portion of the Form I-9.

POSH resources are available

POSH offers a variety of resources to help employers with in-person I-9 verification, including an [I-9 Checklist](#) that provides an easy-to-follow step-by-step verification process, covers an employer’s obligations to store and maintain Forms I-9 data and documents, and includes a [top-10 list of Employer I-9 Don’ts](#). For employers needing assistance completing in-person I-9 verification by August 30, 2023 or for other resources that help with Form I-9 compliance, please reach out to us directly at onlinesolutions@polsinelli.com.