

ICE Issues Updated I-9 Guidance on May 26, 2021

by Sonseere H. Goldenberg - Tuesday, June 01, 2021



Immigration and Customs Enforcement (ICE) **announced** another extension of its rules that allow an employer to remotely inspect a new employee's I-9 documents. In 2020, ICE first announced that it would provide employers with flexibility in viewing I-9 documents for employers taking precautions in the workplace due to COVID-19. This new extension is effective until August 31, 2021.

For Employees Hired After June 1, 2021

This new extension applies to employees hired on or after June 1, 2021 who will work in a remote setting. The employer does not have to inspect a new employee's I-9 documents in-person until the employee works on-site on a "regular, consistent, or predictable basis."

However, the employer is only exempt from in-person inspection if the entire company is operating remotely already. The employer is not exempt from in-person inspection if any employees are working on-site at the work location. There are no exceptions. I-9 flexibility only applies to employers working 100% remotely.

This Extends the March Announcement

The announcement keeps in place ICE's March 31, 2021 **Update** announcement continuing I-9 flexibilities for fully-remote employers. Employers must inspect the I-9 Section 2 documents via video, fax, email or similar, and retain copies of the documents within three business days.

Employers should enter "COVID-19" in Section 2 Additional Information field as the reason the employer could not inspect the employee's documents in person.

Returning to the Office

When normal operations resume and employees return to the actual workplace, the employer should physically inspect the documents, i.e., in-person. All employees should report to their employer within three days for in-person verification of identity and employment eligibility verification.

Employers should supplement the note in the Section 2 Additional Information field with the following language: Documents physically examined. Add the date of inspection as well.

Employers who operate under this flexibility rule must also provide new hires with written documentation of their onboarding and telework policy.

Bottom Line

Employers may continue to inspect I-9 documents remotely as long as the entire company is still working remotely. When employees return to work, they should present their I-9 documents within three days of returning.