

Are You Prepared for the End of the COVID-19 Form I-9 Flexibilities?

MAY 23, 2023

Authors: [Margarita S. Krncevic](#)

The Form I-9 flexibilities implemented during the COVID-19 Pandemic that permitted employers to virtually review Section 1 and inspect documents establishing identity and authorization to work are ending on **July 31, 2023**. After that date, employers have a grace period until **August 30, 2023**, to complete physical inspection of documents that had been virtually inspected during the pandemic.

Even during the Pandemic, once remote employees had physically returned to work on a regular, consistent, or predictable basis, employers were required to physically inspect, within three (3) business days, original documents establishing identity and authorization to work. Employers who were not compliant with this practice as regular operations resumed, should **take steps now** to complete physical examination of these documents.

It is also important to document every effort made to comply with Form I-9 requirements during the Pandemic. Employers should be diligent in documenting all Covid-19 Pandemic protocols taken in the workplace, including dates when any physical distancing protocols were first implemented and documenting any reduced operations or workplace closures. The “Additional Information” part of Section 2 in the Form I-9 should be updated to include information about any initial or re-verification completed during the Pandemic and the date of any subsequent physical inspection. DHS recommends that employers list “COVID-19” in Section 2 as the reason for any physical inspection delay.

This is also an opportunity for employers to ensure that they have a comprehensive Human Resources policy in place to address discrepancies between remote document inspections and subsequently physical inspections. In addition, conducting an internal audit of Form I-9s, and related policies and procedures with counsel, is highly recommended.

Finally, in the event that DHS implements a permanent virtual inspection option, employers should ensure that audit trail requirements for electronic Form I-9s are compliant and capture when an electronic Form I-9 was created, completed, modified, altered, or corrected-and information about the date and time of access, the name of person accessing the Form I-9 (including having an individual pin for each person accessing the Form I-9), and the reason for access and/or what action was taken during the access.

For further assistance, please contact [Margarita Krncevic](#) or any member of [Benesch's Immigration Team](#). Margarita is a skilled immigration and employment attorney with prior in-house counsel experience. She has been a member of Employment Verification and Documentation Committees as well as a presenter on Employer Compliance Issues. She was

named a Notable Immigrant Leader by Crain's Cleveland in 2020, and is a native Spanish speaker.

Margarita can be reached at mkrncevic@beneschlaw.com or 216.363.6285.