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Labor & Employment Alert

AUGUST 2, 2023

All good things must come to an end: Flexible COVID-19 Form I-9 requirements ended on July 31, 2023

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Flexible requirements for remote employment eligibility verification, enacted during the COVID-19 pandemic, ended on July 31, 2023.



What's the Impact?

- / The flexible requirements allowing employers to verify employment eligibility remotely ended July 31, 2023.
- / Employers have until August 30, 2023, to complete in-person employment eligibility verification for employees hired during the pandemic, including companies who remain fully remote.
- / Employers may choose to delegate verification obligations to a third party as an authorized representation where an employee is unable to visit a local office.
- / Participating E-Verify employers may continue remote inspections for new hires.

All good things must come to an end

Effective July 31, 2023, DHS ended flexible requirements for employment eligibility verification. Employers must complete in-person physical inspection of documents by August 30, 2023, for

employees whose documents were inspected remotely pursuant to COVID-19 temporary Form I-9 flexibilities and hired on or after March 20, 2020.

Time to get the ball rolling

Those hired on or after March 20, 2020, who only participated in remote verification must complete an in-person verification with their employer by **August 30, 2023**.

My company loves remote work and is never returning to the office. Now what?

While employers must physically examine documents for all new hired employees and those who previously only had remote inspections conducted, the employer may delegate verification obligations to a third party as an authorized representation (which may be easier for remote employees). It is important to note that the employer remains liable for full compliance with verification requirements.

Are you an E-Verify participant? You're in luck!

Beginning August 1, 2023, employers enrolled in E-Verify may choose to continue conducting remote inspections through a live video interaction with the employee. Qualifying employers must be enrolled in E-Verify, maintain copies of all Form I-9 documents, create a new E-Verify case for new hires, and must check the alternative verification method box on the new version of Form I-9.

Employers who were enrolled in E-Verify during the pandemic and used the temporary COVID-19 flexibilities for Form I-9 completion may take advantage of the new alternative remote procedure to satisfy the physical examination requirement. Employers who were not enrolled in E-Verify at the time they completed Form I-9 using the COVID-19 temporary flexibilities may not use the alternative procedure and must instead comply with the requirement to physically examine the employee's documents, in-person, by August 30, 2023.

Other things to note

- / If any changes occur, such as an employee presenting different but still acceptable documents at the time of physical inspection or a change in an employee's immigration status, DHS recommends completing Section 2 on Form I-9 and attaching it to the form used for remote inspection, notating any changes in the Additional Information field.
- / Impacted Employees cannot refuse a physical document inspection. Without compliance, the employer cannot retain the employee.
- / If a document presented by an employee was valid during remote inspection but has now expired during physical inspection, the employer is not required to request a new document as long as the employee's document was unexpired during remote inspection.
- / Employers are not required to use the new I-9 form until November 1, 2023, but may do so as soon as August 1, 2023.

Nixon Peabody's [Labor & Employment](#) practice and [Immigration](#) team are experienced in assisting clients in navigating these evolving issues. For any assistance with such matters, please reach out to your Nixon Peabody LLP contact or one of the alert authors.

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