

News & Types: Employment, Labor & Benefits Update

# Masuda Funai Employment Newsflash: DHS/ICE End I-9 Inspection Flexibility and Mandate Physical Inspection Retroactively

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By: Naureen Amjad

Practices: Employment, Labor & Benefits

On May 4, 2023, the U.S. Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) announced that employers have until August 30, 2023 to comply with physical inspection requirements of Form I-9 identity and employment eligibility documents for remote employees hired on or after March 20, 2020, and who only received a remote examination of their documents.

For background, on March 20, 2020, ICE announced temporary COVID-19 flexibilities which allowed employers to remotely (i.e., video link, fax or email) review employees’ Form I-9 identity and eligibility documents. Such temporary policy was implemented in response to COVID-19 health and safety precautions which were recommending remote work for non-essential workers at that time. Such flexibilities will now come to an end on July 31, 2023. After such date, employers must resume compliance with pre-COVID physical inspection requirements of identity and employment eligibility documents for all new hires, regardless of their remote or hybrid work status.

Employers are recommended to promptly begin identifying all remote employees hired on or after March 20, 2020, whose Form I-9 identity and eligibility documents were inspected on a purely remote or virtual basis. For employers who hired a significant number of employees over the last three years, this will be an onerous task, making it critical that employers take action soon. Such employees should be notified of the upcoming physical document inspection requirement by August 30, 2023. Employers should then implement a timeline and standard procedures for inspecting such documents. During an in-person physical inspection, employers must annotate certain information on the Form I-9 itself. ICE advises that if the same employer representative inspected the documents remotely and in-person after normal operations resumed, they should note “COVID-19 Documents Physically examined on (date) by (name)” in Section 2’s “Additional Information” field. However, if the employer representative who remotely inspected the documents is no longer employed or otherwise unavailable to conduct the physical in-person exam, ICE recommends that an employer representative complete Section 2 of a new Form I-9 and attach it to the previously completed remote inspection Form I-9.

Please contact Naureen Amjad or any member of the Employment, Labor and Benefits group with questions.