

# In-Person Burden on Remote Workplaces: Physical I-9 Document Re-Inspections Required by August 30, 2023

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Since the late 1980s, U.S. employers have been required to verify employment eligibility of new hires by filling out Form I-9 within three business days of hire. Until March 2020, this process involved physical inspection of documents that establish identity and employment authorization.

Beginning in March 2020, in response to the COVID-19 pandemic, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE), permitted for “flexibility” in complying with I-9 requirements by allowing remote inspection of I-9 documents for remote workers. This flexibility will end on July 31, 2023, when pre-pandemic rules will again require employers to conduct an in-person inspection of the new hire’s documents, even if the new hire is a fully remote employee.

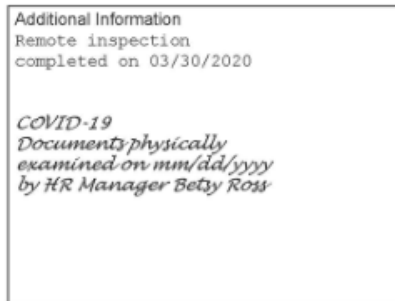
Additionally, documents of all employees hired during the flexibility period, which were not physically inspected, have to be “re-inspected” by August 30, 2023.

## PHYSICAL RE-INSPECTION OF REMOTE EMPLOYEES’ I-9 DOCUMENTATION

All employers with remote workers should self-audit their I-9 forms and ensure that Section 2 of the I-9 confirms physical inspection of each employee’s documents. For each I-9 with remote inspection only, the employers must arrange an in-person inspection of the employee’s documents to take place *before* August 30, 2023.

Employers may use an “authorized representative” to help with the burden of having to physically examine I-9 documents. An authorized representative may perform the review and completion of the I-9 on behalf of the employer, but the employer is still liable for all violations in connection with the document verification process.

When “re-inspecting” an employee’s I-9 documents, the employer must mark compliance on the original I-9 form by writing, “document physically examined on [date] by [name]” under the previous remote inspection date. Additionally, words “COVID-19” should appear between the date of remote inspection and the date of the “re-inspection” to explain the (obvious) reason for the prior remote inspection of documents. On its website, the USCIS provides examples of re-inspected I-9 forms, which should state as follows:



USCIS sample<sup>1</sup>

Because there could be a good amount of time between the virtual and in-person document inspections, an employee is able to present a different but still acceptable document during the process. But employees who are unable to present acceptable documents for physical inspection must be terminated.

The requirement of re-inspection applies to those employers who use E-Verify. There is no need to create a new E-Verify case or update the existing case.

### **IMPORTANCE OF COMPLIANCE**

The return of physical inspection and the “re-inspection” deadline has raised concerns for employers, who can no longer use remote verification of documents effective July 31, 2023, and who need to reconcile all I-9 files of remote and returned employees before August 30, 2023.

ICE can request an audit with a Notice of Inspection and will require all I-9 documentation to be provided within three business days. It is imperative to reconcile all I-9 files of remote and returned employees before August 30, 2023, to avoid fines and penalties during an audit.

### **HOPE FOR A FLEXIBLE PROCESS AND NEW I-9 FORM**

The flexible remote inspections helped employers balance safety and compliance, and hopes of a similar process could be on the horizon. Last year, the DHS published a Notice of Proposed Rulemaking for alternative procedures allowing remote document examination for Form I-9 and a Final Rule in the Federal Register is expected soon. This could lead to the flexible practice being taken into consideration with new rules to come. A new I-9 Form is also expected.

Roetzel employment and immigration attorneys are available to guide their clients through the requirements of I-9 compliance and “re-inspection” process.

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<sup>1</sup> <https://www.uscis.gov/i-9-central/form-i-9-examples-related-to-temporary-covid-19-policies>