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## Immigration Blog

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# Companies Prep to Return to Worksites as Temporary Flexibility for I-9 Compliance Extended

By Amy L. Peck & Aimee Guthat on March 2, 2021

Flexibility in completing I-9 Employment Verification Forms has been continued until March 31, 2021, and it may be extended beyond that. Under that flexibility, employers have been allowed to inspect Section 2 Form I-9 documents virtually (e.g., over video link, by fax, or by email).

Nevertheless, as companies “return” to worksites and show their own flexibility in remote working scenarios, it is time to start planning and preparing for how to do the required in-person verifications and for the ultimate end of ICE’s flexibility. The rule is that once “normal operations resume,” in-person verification must be completed within three business days. ICE has not provided much guidance on what constitutes that resumption.

There are so many variations in the way companies have been working remotely. Here are a few ways the end of the flexibility policy could play out.

First, where ICE decides to end flexibility on a date certain and requires in-person verification within three days or by a certain date, employees who were verified virtually will have the specified number of business days to report for in-person verification. The hope is that ICE will provide sufficient notice before ending the policy or will give employers at least 60 days to re-verify their employees.

Second, where some employees, but not all, are returning to the worksite before the end of the policy, employers should ask employees who are returning and were verified virtually to report within three business days of their return for in-person verification.

Third, where the employer is continuing remote operations due to COVID-19 concerns even after the end of the flexibility policy, ICE might consider the circumstances on a case-by-case basis. How the agency will ultimately respond to an employer's continuation of virtual verification is unknown.

Given the uncertainty, advance planning will be important, especially if a large number of employees have been verified virtually. Consider the following:

- Make sure you have maintained a list of all employees who were verified virtually, when they will be returning to work, and the deadline for their in-person verification.
- Determine who will be conducting the in-person verifications and how and when they will be reaching out to the affected employees. Remember that using authorized representatives to do the in-person review, as always, continues to be an option. Any person can be an authorized representative. **Remember:** the employer remains liable for any mistakes made by the representative and representatives should not be biased.
- Train staff on how to update I-9 forms after the in-person review. After the physical inspection, the **employer or authorized representative should note** "COVID-19" as the reason for the delayed in-person inspection and "documents physically examined" with the appropriate date and the name of the person who conducted the review in the "Additional Information" field in Section 2 of the I-9 or in Section 3 (for reverification) as is appropriate.

Jackson Lewis attorneys are available to answer questions and help to develop strategies to deal with the uncertainties regarding the continuation of Form I-9 flexibility.