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Legal Alerts

Form I-9 Practice Alert: End of COVID-19 Flexibility for Virtual Document Reviews

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Since March 2020, during the worst of the COVID-19 pandemic, the Department of Homeland Security ("DHS") allowed temporary flexibility for the I-9 process, permitting virtual document reviews. However, DHS recently announced the end of this leniency, effective July 31, 2023.

In addition to requiring in-person inspections, DHS announced another requirement. Employers will have until August 30, 2023, to complete physical inspections of documents for Forms I-9 that were originally completed remotely under the temporary policy. The deadline for this in-person review is August 30, 2023. DHS has provided recommendations and examples for annotating Form I-9 during in-person physical inspections for paper I-9 reverification.

However, employers who use E-Verify will be allowed a simpler process for re-reviewing I-9 forms. On July 25, 2023, DHS announced that E-Verify-enrolled employers in good standing may use limited electronic or remote visual inspection options. For those using an electronic I-9 system, employers or their vendors should establish workflows to identify and update documents reviewed virtually.

DHS also issued a new edition of Form I-9 on August 1, 2023. This form must be used beginning November 1, 2023.

Importance of Compliance

The August 30, 2023, deadline is critical, as non-compliance may lead to fines for paperwork violations. Employers, therefore, should update their forms as soon as possible. Additionally, employers may take this opportunity to conduct an internal audit of their Forms I-9 and assess the integrity of their employment verification procedures.

Further Guidance and Support

DHS has provided limited guidance on this process to date. The Foster Garvey Labor, Employment & Immigration team will continue to monitor developments and provide updates as they become available. Our attorneys are poised to assist employers with transitioning to the new requirements and to collaborate on I-9 audits.

The following diagram illustrates key action items and dates employers should keep in mind:

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Authored by

Leo C. Peng

Principal|Seattle

206.816.1537 leo.peng@foster.com

Steven R. Peltin

Principal|Seattle

206.447.6215 steve.peltin@foster.com

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