

# GMS Flash Alert

Immigration Edition

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## United States - COVID-19: Form I-9 Compliance Flexibility Extended to August 31

On May 26, 2021, the United States Immigration and Customs Enforcement (ICE) extended the flexibility provided to employers and employees for Form I-9 compliance with regard to physical inspection of employment documents.<sup>1</sup> The extension will last through August 31, 2021, and will allow employers to continue to remotely inspect Form I-9 compliance documents for certain employees. ICE cited the continued precautions taken by employers due to COVID-19, as the rationale for this extension.

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### WHY THIS MATTERS

With the prevalence of “work from home” due to COVID-19, employers will continue to have the flexibility to review their employees’ work authorization documents electronically instead of performing physical inspection.<sup>2</sup> Employers can continue to obtain, remotely inspect (via video, fax, email, etc.) and retain these documents within three business days of the employee’s start date for the purposes of completing Section 2 on the Form I-9. Permitting employers to continue remote inspection of I-9 employment documents allows employers to quickly on-board new hires and helps to prevent disruption to their business.

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### Background

To comply with federal law, U.S. employers must complete Form I-9, *Employment Eligibility Verification* requirements to verify the identity and employment authorization of their U.S. workforce including both U.S. citizen and non-citizen workers. Several sections of the Form I-9 require that the employee present his/her identity and employment authorization documents to the employer for physical inspection so that the employer may assess the authenticity of the documentation. Failure to properly comply with Form I-9 requirements can result in monetary fines imposed on the employer, disbarment from government contracts, and, in certain situations, criminal penalties.<sup>3</sup>

### Further Details on Form I-9 Compliance Extension

ICE’s flexibility on the physical inspection requirements to complete Form I-9 applies to employees who are exclusively working remotely due to COVID-19-related precautions of the employer and are hired on or after June 1, 2021. Such employees are exempt from Form I-9’s physical inspection of work authorization documents until they resume non-

remote employment on a “regular, consistent, or predictable basis” or when ICE’s flexibility expires, whichever is earlier.

If there are employees physically present at a work location, no exceptions are being implemented for the in-person verification Form I-9 requirement. If newly-hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, ICE will evaluate the employer’s application of remote verification procedures on a case-by-case basis.

## Considerations for Employers

Employers who choose to remotely verify the documents of their employees pursuant to ICE’s extended guidance, must continue to provide written documentation of the company’s remote on-boarding and tele-work policies to each new employee. This could mean additional administration for employers.

Employers should continue to enter “COVID-19” as the reason for the physical inspection delay in the Section 2 “Additional Information” field once physical inspection takes place after normal business operations resume.<sup>4</sup> Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Form I-9 Section 2 Additional Information field, or to Section 3 as appropriate.<sup>5</sup>

ICE continues to remind employers that these are temporary measures due to the precautions surrounding COVID-19. Once normal business operations resume, all employees who were on-boarded using remote verification, must report to their employer within three business days for in-person verification of identity and employment eligibility documentation to complete the Form I-9.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

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## FOOTNOTES:

1 ICE [Announcement](#), (May 26, 2021); [Initial Guidance issued by ICE](#) (March 19, 2020).

2 For previous coverage, please see the following issues of *GMS Flash Alert*: [2020-289](#) (June 22, 2020), [2020-159](#) (April 8, 2020), and [2020-095](#) (March 23, 2020).

3 For more information on the current civil fine amounts please [click here](#).

4 See ICE webpage, "[DHS announces flexibility in requirements related to Form I-9 compliance](#)."

5 Ibid.

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## Contact us

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