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March 25, 2020

I-9 Verification Requirement Flexibility During COVID-19 Emergency

The COVID-19 emergency has caused a great deal of uncertainty for all businesses and their employees. On March 19, 2020, the Department of Homeland Security announced interim guidelines for I-9 verification procedures during this period. The DHS's emergency guidelines provide for flexibility in I-9 document verification in certain situations and for a temporary halt in I-9 audits.

The DHS's first guideline during this emergency is to provide assistance to companies that are engaging in remote working in an effort to curb the outbreak. The DHS has relaxed the requirement that under 274A of the Immigration and Nationality Act an employer must review an employee's identity and employment authorization documents in the employee's physical presence. This flexibility is only applicable if the employer and workplace is operating remotely. The DHS specifically states that this exception will not apply if employees are physically present in the workplace, however, if the new employee is subject to COVID-19 lockdown or quarantine protocols, then the DHS may allow for relaxed requirements on a case by case basis.

If a company is entitled to the relaxed verification requirements, they still must inspect the documents remotely, either through skype, email, fax, or other appropriate options. The company must then obtain copies of all documents within three business days of the remote inspection. In Section 2 of Form I-9, employers should note COVID-19 as the reason for the physical inspection delay. Once a physical inspection does take place, either 60 days from the DHS notice date or 3 business days after the National Emergency ends, the employer must note the date of physical inspection. Audits made on the Forms I-9 will use the physical inspection date as the beginning of their investigation.

The DHS's second guideline during this emergency is to temporarily halt I-9 audits currently in place. Any employer who received a notice of inspection and has not yet responded is granted an automatic 60 day extension. After the 60 days expires, the DHS will evaluate the need for a further extension. While there is no guidance about new inspections, it seems likely that the DHS will not conduct new inspections until the National Emergency subsides.

Although this is a stressful and difficult time for all employers, it may also be a good time to evaluate your I-9 verification policy and potentially conduct internal audits once we are all back up and running.

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