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Client Alert: Form I-9 Remote Inspection Flexibility Ending July 31, 2023

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The U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) has announced that the COVID-19 temporary flexibilities for Form I-9, Employment Eligibility Verification, will end on July 31, 2023.

On March 20, 2020, in response to the COVID-19 pandemic, DHS and ICE announced that it would defer the requirement that employers review employees' identity and employment authorization documents in the employees' physical presence, instead allowing inspection to occur remotely via video link, fax, email, or other electronic means, with the expectation that physical inspection would occur within three business days after normal operations resumed. Employers were permitted to continue to use remote inspection of employee documentation until affected employees began reporting to an employer's physical location on a regular, consistent, and predictable basis or the extension of the flexibilities was terminated, whichever was earlier.

Upon the expiration of these temporary flexibilities on July 31, 2023, employers will no longer be permitted to remotely inspect an employee's identity and employment authorization documentation for Form I-9 purposes.

Additionally, employers have until **August 30, 2023**, to perform in-person, physical examinations of the identity and employment eligibility documentation for individuals hired on or after March 20, 2020 who have only received a virtual or remote examination of their Form I-9 documentation.

U.S. Citizenship and Immigration Services (USCIS) advises that when an employee (whose documentation was remotely inspected) is presenting his or her documentation for physical inspection, the employer should enter "COVID-19" as the reason for the physical inspection delay in Form I-9 Section 2, Additional Information field. Further, the employer should write, "documents physically examined" with the date of the inspection in the Additional Information field, or in Section 3 as appropriate. If the person who performed the remote inspection also performs the physical inspection, they should indicate the date they physically examined the documents then add their initials in the Additional Information field. If, however, the person who performed the remote inspection cannot also perform the physical inspection, the person who performs the physical inspection should indicate the date they physically examined the documents, as well as their full

name and title in the Additional Information field.

Employers are permitted to use authorized representatives (i.e., notaries) to conduct these in-person, physical inspections on their behalf.

It is important to note, that regardless of the method employers use to conduct these in-person, physical inspections, employers should remember to verify employee Form I-9 documentation consistently and in a nondiscriminatory manner.

USCIS has released some helpful guidance to aid employers:

- Form I-9 Examples Related to Temporary COVID-19 Policies with instructions on How to Notate Remote Inspections and Subsequent Physical Inspections, which can be found here; and
- Questions and Answers Related to COVID-19 with Questions Related the End of ICE COVID-19 Flexibilities, which can be found here.

If you have any questions about this policy ending, please contact your Shumaker attorney.

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