

CLIENT ADVISORY

March 24, 2020

COVID-19 & Form I-9 Compliance and Worksite Enforcement

Due to the threat presented by COVID-19, the Department of Homeland Security (DHS) has relaxed the physical presence requirements when employers review documents associated with Form I-9 requirements.

All employers in the United States must verify the identity and employment authorization of all employees. Employers and employees must complete a two-page form, the Form I-9, Employment Eligibility Verification, in order to satisfy the required verification. Among other things, this normally requires employers to review physical documents, certify that employees are authorized to work in the United States, and that employees are the people they claim to be.

On March 20, 2020, U.S. Immigration and Customs Enforcement (ICE) announced that it will relax this physical inspection requirement for employers taking precautions due to COVID-19. Specifically, ICE will permit employers to “inspect” identity and authorization documents remotely, such as through email, fax, and even video link. However, employers will be required to obtain physical copies of these documents within three business days. Normal operations and in-person inspections can resume once the National Emergency comes to an end.

ICE also announced that employers shall be afforded an additional 60 days to respond to a Notice of Inspection (NOI). Under normal circumstances, upon receipt of a NOI, employers have three business days to produce Forms I-9, so that ICE agents or auditors may conduct their inspections.

Employers must be diligent in verifying an employee’s work authorization but should be cautious to avoid immigration-related discrimination. Under federal law, an employer may not refuse to hire a worker on account of their national origin or citizenship status. Therefore, employers should be aware that in addition to U.S. citizens, permanent residents, asylum seekers, and refugees are afforded these legal protections if they are authorized to work.

* * * * *

For more information regarding worksite enforcement and I-9 audits, please contact Amy Richardson at +1 202-730-1329 or arichardson@hwglaw.com, Roy Austin at +1 202-730-1333 or raustin@hwglaw.com, or John Amaya at +1 202-796-0983 or jamaya@hwglaw.com.

This regulatory advisory is not intended to convey legal advice. It is circulated as a convenience and is not intended to reflect or create an attorney-client relationship as to its subject matter.