Proskauer

DHS Temporarily Allows Remote Completion of Form I-9

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Advice to U.S. Employers: Immigration Insights Series during COVID-19 Crisis

Proskauer's Immigration Practice Group is advising clients on an array of challenges as companies find it difficult to comply with their Immigration and Reform Control Act (IRCA) obligations and maintain the legal status of the non-immigrant population.

We are publishing a series of alerts offering guidance on the many important issues facing our clients during this ever-changing and challenging situation. Our first alert related to the challenge of completing an I-9 Form upon hiring a new employee when there is limited or no access to the company's facilities and "remote" alternatives must be considered. Demonstrating that rapid pace of change during these uncertain times, the Department of Homeland Security (DHS) today announced "flexibility" in completing I-9 Forms remotely. As a result, during this pandemic, if an office is working remotely DHS is permitting employers to review identity and work authorization documentation via webcam to complete the Form I-9. Once the office resumes normal operations, the employer must physically inspect the documents and update the I-9 Form.

Our team is available to you to provide guidance and assistance in adapting to the challenges.

Advisory 1A: Completing Form I-9 Remotely – Permissible During Office Closures and Teleworking

The Office of Congressional Relations at U.S. Immigration and Customs Enforcement announced today that they are temporarily lifting the physical inspection requirement when completing the Form I-9, considering the precautions employers and employees are implementing due to COVID-19. Specifically, DHS is exercising its discretion to defer the requirement to physically inspect the documents in order to properly complete the Form I-9 for a 60-day period OR within 3 business days after the termination of the National Emergency, whichever comes first.

While employers and their employees are working remotely to ensure social distancing due to COVID-19, they are not required to review employee's identity and employment authorization documents in person. They will be permitted to inspect the documents remotely. The guidance is broad, allowing inspection via "video link, fax or email, etc." Employers must obtain, inspect, and retain copies of the documents, within three business days and enter "COVID-19" in Section 2's "Additional Information" field. Once normal operations resume, physical inspection of the documents must be performed within 3 business days and Section 2 of the I-9 Form must be updated with "documents physically examined" and the date of inspection.

Further, employers that use the remote inspection option must maintain evidence of their remote onboarding and telework policy in case of Audit. This exception is only permitted for workplaces that are operating remotely. If employees are onsite, there is no ability to use remote verification unless newly-hired or existing employees are in quarantine or lockdown due to COVID-19. Again, evidence of such quarantine or lockdown should be maintained in case of Audit.

Conclusion:

Employers that are implementing telework or remote work during the Coronavirus pandemic may choose to review identity and work authorization documents remotely and later update the I-9 Form within 3 business days of resuming normal operations. As of now, this provision is available for 60 days or within 3 days of the end of the National Emergency – whichever comes first. We are hopeful that, if the National Emergency continues for more than 60 days, DHS will extend this policy. Proskauer will continue to provide updates on the evolving situation.