

# Post-COVID Compliance and Enforcement Trends

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**Fredrikson**

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# Agenda

- Welcome
- End of Public Health Emergency
- Status of Immigration COVID-related flexibilities
- Immigration enforcement

# End of COVID-19 Public Health Emergency

May 11, 2023

- Biden-Harris Administration will end COVID-19 vaccine requirement for federal employees, federal contractors, and international air travelers on May 11, 2023
- Other immigration implications
- Review of COVID-19 Immigration related flexibilities

# End of COVID-19 Public Health Emergency

## Other Immigration Implications

- End of Title 42, Public Health Services Act
- Summary expulsion of asylum seekers and migrants at the US Border due to public health emergency

# Status of Immigration COVID-related flexibilities

USCIS Extended Electronically Reproduced Original Signature Indefinitely on July 25, 2022:

- USCIS will accept all benefit forms and documents with reproduced original signatures, including the Form I-129, Petition for Nonimmigrant Worker, for submissions dated March 21, 2020, and beyond.
- For forms that require an original “wet” signature, per form instructions, USCIS will accept electronically reproduced original signatures.
- Document may be scanned, faxed, photocopied, or similarly reproduced of original documents containing an original wet handwritten signature.
- Must retain the original “wet signature” document as USCIS may request it be provided.

# Status of Immigration COVID-related flexibilities

## USCIS RFE and Deadlines

- COVID-related flexibilities to respond to the following ended March 23, 2023:
  - Request for Evidence
  - Continuations to Request Evidence;
  - Notices of Intent to Deny; Notices of Intent to Revoke;
  - Notices of Intent to Rescind;
  - Notices of Intent to Termination (Regional Centers);
  - Notices of Intent to Withdraw Temporary Protected Status;
  - Motions to Reopen an N-400;
- COVID-related flexibilities to file the following ended March 23, 2023
  - I-290B Notice of Appeal
  - N-336 Request for Hearing on Decision in Naturalization Proceedings

# Status of Immigration COVID-related flexibilities

- Temporary policy for certain foreign medical graduates during COVID-19 national emergency:
  - Effective May 11, 2020
  - Full-time work requirement-if physician is unable to work full-time due to COVID-19, they will not fail to fulfill the terms of the J-1 waiver service obligation
  - Telehealth services permissible to fulfill three-year obligation
  - Policy will cease upon the end of the public health emergency

# Status of Immigration COVID-related flexibilities

- USCIS temporary final rule on interpreters at asylum interviews:
  - Extended until September 12, 2023
  - Asylum applicants who cannot proceed with the interview in English not required to provide interpreters at the asylum interview but use DHS-provided telephonic interpreters
  - If DHS cannot provide telephonic interpreters for the language that the applicant speaks, the applicant can bring their own interpreter
  - Delays in obtaining an interpreter due to USCIS inability to find an interpreter will not be detrimental to the applicant



# Status of Immigration COVID-related flexibilities

- I-9 Process:
  - The I-9 flexibility temporary guidance was set to expire October 31, 2022.
  - Because of ongoing precautions related to COVID-19, DHS has [extended the Form I-9 flexibilities until July 31, 2023.](#)
    - *NOTE: CA and TX limit who can complete an I-9 Form (notary public restrictions)*
  - USCIS announced on May 5, 2023, it will end COVID-19 temporary flexibilities for Form I-9, Employment Verification Form on July 31, 2023.
  - US Immigration and Customs Enforcement (ICE) announced employers must complete in-person physical document inspection for employees whose documents were inspected remotely by August 30, 2023.

# Status of Immigration COVID-related flexibilities

- Ending of Remote I-9 Completion
  - If formerly remote employee returns to on-site employment, I-9 Form must be physically inspected within 3 business days
  - Otherwise, within 1 month of when I-9 flexibilities expire (*August 30, 2023*) all I-9 Forms remotely verified must be physically inspected
  - Alternatively, nothing precludes employer from physically inspecting earlier (pursuant to written policy)
- Untimely physical inspection for remote employees = Case-by-case penalties in audit

# Status of Immigration COVID-related flexibilities

## Process for Completion of I-9 Forms Remotely Completed Previously

- Write *“Documents physically examined”* with the date of the inspection and the authorized representative’s initials (in red ink) to the Section 2 *“Additional Information”* field on the I-9 Form, or to Section 3 as appropriate
- Same documents = no additional documentation required
- Previous documents lost/unavailable = New I-9 Form with List A or B/C documents
- Same employer rep = write *“COVID-19 documents physically examined on (date) by (name)”* in red ink in the *“Additional Information”* field in Section 2
- Different employer rep = new rep should conduct new Section 2 and attach to previous I-9 Form
- Employee terminated but within mandatory retention period = document reason for inability to inspect

# Remote Inspection



**Section 2. Employer or Authorized Representative Review and Verification**  
(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

<b>Employee Info from Section 1</b>	Last Name (Family Name) Washington	First Name (Given Name) George	M.I. N/A	Citizenship/Immigration Status 2
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List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title N/A		Document Title Driver's license issued by state/territory		Document Title Social Security card (unrestricted)
Issuing Authority N/A		Issuing Authority Virginia		Issuing Authority Social Security Administration
Document Number N/A		Document Number 123456		Document Number 123456789
Expiration Date (if any) (mm/dd/yyyy) N/A		Expiration Date (if any) (mm/dd/yyyy) 02/22/2022		Expiration Date (if any) (mm/dd/yyyy) N/A
Document Title N/A		Additional Information  Remote inspection completed on 03/30/2020		QR Code - Section 2 Do Not Write in This Space 
Issuing Authority N/A				
Document Number N/A				
Expiration Date (if any) (mm/dd/yyyy) N/A				
Document Title N/A				
Issuing Authority N/A				
Document Number N/A				
Expiration Date (if any) (mm/dd/yyyy) N/A				

**Certification:** I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): 03/30/2020 (See instructions for exemptions)

Signature of Employer or Authorized Representative <i>Abigail Adams</i>	Today's Date (mm/dd/yyyy) 03/30/2020	Title of Employer or Authorized Representative HR Manager	
Last Name of Employer or Authorized Representative Adams	First Name of Employer or Authorized Representative Abigail	Employer's Business or Organization Name Department of Defense	
Employer's Business or Organization Address (Street Number and Name) 123 Independence Avenue NW		City or Town Washington	State DC
		ZIP Code 20210	

**Section 3. Reverification and Rehires** (To be completed and signed by employer or authorized representative.)

<b>A. New Name (if applicable)</b>			<b>B. Date of Rehire (if applicable)</b>	
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)	

**C.** If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.


Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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# Remote Inspection



## Performing physical inspection for remote I-9 employee

- If **person who performed remote inspection also performs physical inspection of I-9 Form**, they should:
  - Indicate date of physical examination with their initials in the “Additional Information” field
- **\*If document was unexpired at time of remote inspection, employer should not request new document but can simply reinspect prior List A/B&C document(s)\***

Section 2. Employer or Authorized Representative Review and Verification				
<i>(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")</i>				
Employee Info from Section 1	Last Name (Family Name)	First Name (Given Name)	M.I.	Citizenship/Immigration Status
	Washington	George	N/A	2
List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title N/A		Document Title Driver's license issued by state/territory		Document Title Social Security card (unrestricted)
Issuing Authority N/A		Issuing Authority Virginia		Issuing Authority Social Security Administration
Document Number N/A		Document Number 123456		Document Number 123456789
Expiration Date (if any) (mm/dd/yyyy) N/A		Expiration Date (if any) (mm/dd/yyyy) 02/22/2022		Expiration Date (if any) (mm/dd/yyyy) N/A
Document Title N/A		Additional Information Remote inspection completed on 03/30/2020  COVID-19 Documents physically examined on mm/dd/yyyy by AA		QR Code - Section 2 Do Not Write in This Space  
Issuing Authority N/A				
Document Number N/A				
Expiration Date (if any) (mm/dd/yyyy) N/A				
Document Title N/A				
Issuing Authority N/A				
Document Number N/A		Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States. The employee's first day of employment (mm/dd/yyyy): 03/30/2020 (See instructions for exemptions)		
Expiration Date (if any) (mm/dd/yyyy) N/A		Signature of Employer or Authorized Representative <i>Abigail Adams</i>	Today's Date (mm/dd/yyyy) 03/30/2020	Title of Employer or Authorized Representative HR Manager
		Last Name of Employer or Authorized Representative Adams	First Name of Employer or Authorized Representative Abigail	Employer's Business or Organization Name Department of Defense
		Employer's Business or Organization Address (Street Number and Name) 123 Independence Avenue NW	City or Town Washington	State DC
			ZIP Code 20210	
Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)				
A. New Name (if applicable)			B. Date of Rehire (if applicable)	
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)	
C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.				
Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)		
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.				
Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative		

# Remote Inspection

## Performing physical inspection for remote I-9 employee

- If **different person performs physical inspection of I-9 Form**, they should:
  - Indicate date of physical examination with their full name and title in the “Additional Information” field



### Section 2. Employer or Authorized Representative Review and Verification

*(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")*

<b>Employee Info from Section 1</b>	Last Name (Family Name) Washington	First Name (Given Name) George	M.I. N/A	Citizenship/Immigration Status 2
List A Identity and Employment Authorization	OR	List B Identity	AND	List C Employment Authorization
Document Title N/A		Document Title Driver's license issued by state/territory		Document Title Social Security card (unrestricted)
Issuing Authority N/A		Issuing Authority Virginia		Issuing Authority Social Security Administration
Document Number N/A		Document Number 123456		Document Number 123456789
Expiration Date (if any) (mm/dd/yyyy) N/A		Expiration Date (if any) (mm/dd/yyyy) 02/22/2022		Expiration Date (if any) (mm/dd/yyyy) N/A
Document Title N/A		Additional Information Remote inspection completed on 03/30/2020		QR Code - Section 2 Do Not Write In This Space  
Issuing Authority N/A		COVID-19 Documents physically examined on mm/dd/yyyy by HR Manager Betsy Ross		
Document Number N/A				
Expiration Date (if any) (mm/dd/yyyy) N/A				
Document Title N/A				
Issuing Authority N/A				
Document Number N/A				
Expiration Date (if any) (mm/dd/yyyy) N/A				

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): 03/30/2020 (See instructions for exemptions)

Signature of Employer or Authorized Representative <i>Abigail Adams</i>	Today's Date (mm/dd/yyyy) 03/30/2020	Title of Employer or Authorized Representative HR Manager	
Last Name of Employer or Authorized Representative Adams	First Name of Employer or Authorized Representative Abigail	Employer's Business or Organization Name Department of Defense	
Employer's Business or Organization Address (Street Number and Name) 123 Independence Avenue NW		City or Town Washington	State DC
			ZIP Code 20210

### Section 3. Reverification and Rehires

*(To be completed and signed by employer or authorized representative.)*

A. New Name (if applicable)			B. Date of Hire (if applicable)
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)

C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.

Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.


Signature of Employer or Authorized Representative	Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative
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# Remote Inspection

## Performing physical inspection for remote I-9 employee

- Notations for remote and subsequent physical inspections for reverifications (Section 3) should be made in “Additional Information” field in Section 2:
  - If **same person** performs both remote and subsequent physical inspections for reverification, write date of physical examination with their initials in the “Additional Information” field
  - If **different person** performs physical inspection, that person should write full name and title (instead of initials)



Section 2. Employer or Authorized Representative Review and Verification				
<i>(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")</i>				
Employee Info from Section 1	Last Name (Family Name) Hamilton	First Name (Given Name) Alexander	M.I. N/A	Citizenship/Immigration Status
List A Identity and Employment Authorization		OR	List B Identity	AND List C Employment Authorization
Document Title	Document Title	Document Title	Document Title	Document Title
Issuing Authority	Issuing Authority	Issuing Authority	Issuing Authority	Issuing Authority
Document Number	Document Number	Document Number	Document Number	Document Number
Expiration Date (if any) (mm/dd/yyyy)	Expiration Date (if any) (mm/dd/yyyy)	Expiration Date (if any) (mm/dd/yyyy)	Expiration Date (if any) (mm/dd/yyyy)	Expiration Date (if any) (mm/dd/yyyy)
Document Title	Additional Information		QR Code - Sections 2 & 3 Do Not Write in This Space	
Issuing Authority	<i>Remote inspection completed on mm/dd/yyyy</i>			
Document Number	<i>COVID-19</i>			
Expiration Date (if any) (mm/dd/yyyy)	<i>Document physically examined on mm/dd/yyyy by JA</i>			
Document Title				
Issuing Authority				
Document Number				
Expiration Date (if any) (mm/dd/yyyy)				
Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.				
The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions)				
Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)	Title of Employer or Authorized Representative	
Last Name of Employer or Authorized Representative		First Name of Employer or Authorized Representative	Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)			City or Town	State ZIP Code
Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)				
A. New Name (if applicable)			B. Date of Rehire (if applicable)	
Last Name (Family Name)	First Name (Given Name)	Middle Initial	Date (mm/dd/yyyy)	
N/A	N/A	N/A	N/A	
C. If the employee's previous grant of employment authorization has expired, provide the information for the document or receipt that establishes continuing employment authorization in the space provided below.				
Document Title	Document Number	Expiration Date (if any) (mm/dd/yyyy)		
Employment Auth. Document (Form I-766)	123456789	04/30/2022		
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.				
Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)	Name of Employer or Authorized Representative	
<i>John Adams</i>		04/29/2020	Department of Justice	

# Remote Inspection – E-Verify

## E-Verify Process for Remote I-9 Completion

- Once documents remotely inspected, employer should create E-Verify case for employee
  - *E-Verify case should be created within 3 business days of first day of employment.*
  - *Use hire date from employee's I-9 Form when completed E-Verify case*
  - *If E-Verify case creation is delayed due to COVID-19 precautions, employer should select "Other" from drop-down list and enter "COVID-19" as reason for delay*
- When remote employee documents physically inspected at later date:
  - *Employers should not create a new E-Verify case*
  - *Employers should not update existing E-Verify case*



# Immigration Enforcement

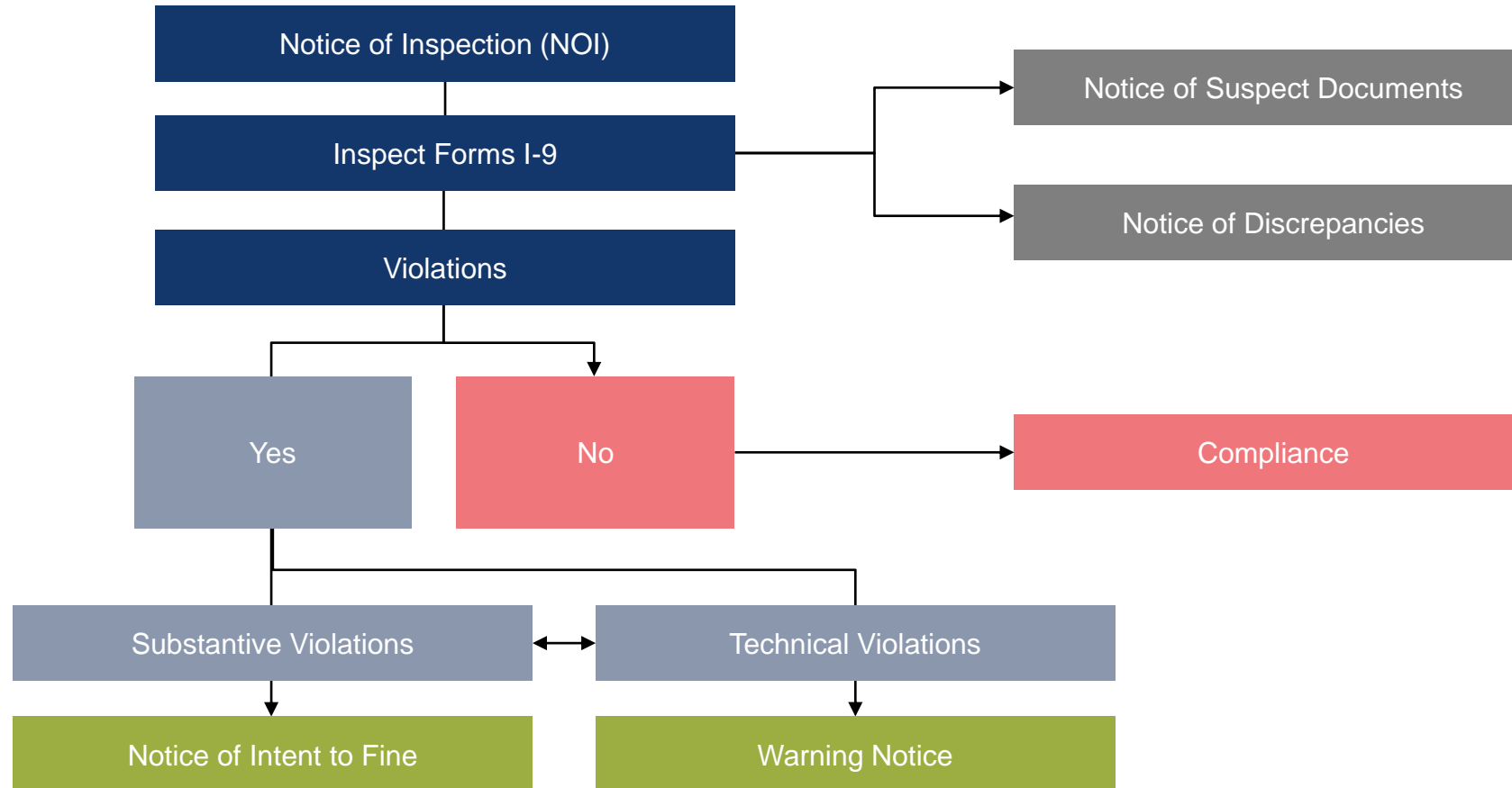
## I-9 Penalties

- **Civil Penalties**
  - First Technical Offense - \$252 to \$2,507/violation
  - Second Technical Offense - \$1,161 to \$2,322/violation
  - First Knowing Violation - \$627 to \$5,016/violation
  - Second Knowing Violation - \$5,016 to \$12,537/violation
  - Third Knowing Violation - \$5,016 to \$12,537/violation
- **Criminal Penalties**
  - Pattern or practice of knowing violations > criminal fines (up to \$3,000/employee) and/or six months imprisonment

Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Worker(s)	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%

# Immigration Enforcement

## ANATOMY OF AN I-9 AUDIT



# Immigration Enforcement

## I-9 Maintenance and Retention

- Employers must maintain I-9 forms for the later of the following:
  - 3 years from date of hire, *or*
  - 1 year after end of employment, whichever is later
- Maintain I-9 forms separate from personnel files
- Separate I-9 forms of current employees from terminated employees
- Attach supporting documents to I-9 form if company has policy of making copies
  - Must be uniformly applied
  - Enables an employer to correct I-9 Forms if issues identified
- I-9 forms can be stored at headquarters, individual offices, or electronically
- Store I-9 forms so they can be made available within 3 business days in an I-9 audit

# Immigration Enforcement

## I-9 Compliance Best Practices

- Designate a central I-9 Administrator
- Establish a written I-9 policy
- Have legal counsel conduct internal I-9 audit
- Prepare new I-9 forms for employees with missing/no I-9 forms on file
- Standardized annual trainings for all employees, new hires

# Immigration Enforcement

## I-9 Compliance Best Practices

- Correct all errors where possible
  - *Use a different color pen*
  - *Strike out errors with a single line; Never use white-out*
  - *Correct, initial, note reason (e.g., “per audit on \_\_\_\_\_”)*
- Never backdate I-9 corrections
- Consider maintaining copies of I-9 supporting documents to avoid substantive I-9 fines

# Immigration Enforcement

## I-9 Audit Best Practices

- Designate a central point of contact for initial communication with ICE/HSI
- Centralize I-9 retention and retain separately
- Contact legal counsel
- Employers have three business days to present the I-9s
- Make copies of all communication/ documentation provided to ICE

# Immigration Enforcement

## Types of Worksite Enforcement

- *Department of Homeland Security(DHS)/Homeland Security Investigations (HSI)*
  - Criminal Activities: Alien smuggling, human trafficking, money laundering, document fraud, worker exploitation and/or substandard wage and working conditions
  - Administrative enforcement against undocumented immigrants/employees
- *DHS/USCIS*
  - Fraud Detection National Security Investigations: H-1B, H-2, L-1, R-1, F-1 STEM OPT

# Immigration Enforcement

## Types of Worksite Enforcement (continued)

- *DOJ Immigrant and Employee Rights Division*
  - Discriminatory hiring patterns (preference for/against immigrant employees, reverifying LPRs, etc.)
- *DOL*
  - LCA Investigations
  - Wage and Hour Division



# Immigration Enforcement

## Establish a worksite enforcement action plan

- Designate a company representative who will be point of contact with government until counsel is contacted
- Provide legal counsel's contact information
- Establish internal communication plan
- Communicate/role-play worksite enforcement plan to employees on the front line (i.e., receptionists, administrative assistants, etc...)

# Immigration Enforcement

## Know your rights as an employer

- Inform ICE/DOL/USCIS you have legal counsel – call legal counsel immediately
- Take investigators to a private meeting/conference room
- Investigators should present search warrant to enter non-public areas and to access company information
- Carefully review search warrant
- You have the right to respectfully object to an investigator's request

# Immigration Enforcement

## Know your rights as an employer (continued)

- Employees have the right to have counsel before speaking to investigators
- Inform employees they have the right to choose to speak or not speak with investigators
- Do not tell employees not to speak to investigators; it is their choice to make
- Do not tell employees to hide or leave the premise

# Immigration Enforcement – Labor Condition Application (DOL)

## LCA posting

- Electronic posting vs. Physical Posting

## LCA public access folders retention

- For a period of one year beyond the last date of employment of H-1B worker under the LCA, or
- If the employer did not employ any H-1B workers under the LCA, one year from the date the LCA expired or from the date it was withdrawn

Payroll records - retain for three years from their creation.

# Immigration Enforcement – PERM Audits (DOL)

## PERM Audit Files:

- Retain for five years from the date of filing

## The future of PERM Audits:

- New ETA 9089 Form

# Contact Information



**Loan Huynh**

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# Thank you!

**Fredrikson**

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