

CLIENT ALERT: The Latest on Form I-9 and the Independent Contractor Rule
October 20, 2022

In this client alert we address recent developments regarding independent contractors and I-9 document verification. If you have additional questions about these topics, please reach out to Peter Lowe at plowe@brannlaw.com or Hannah Wurgaft at hwurgaft@brannlaw.com.

Current Policy on Form I-9 Verification

We have [previously written about](#) federal guidance regarding Form I-9 document inspections. Since the beginning of the pandemic, employers have been permitted to perform remote document verification for those employees working remotely due to COVID-19 precautions. Last week the Department of Homeland Security announced this policy will be extended until July 31, 2023.

Employees working exclusively remotely due to COVID-19 precautions are temporarily exempt from the in-person document inspection requirements. Employees hired on a remote or hybrid basis for business reasons unrelated to the pandemic are not eligible for remote document inspection. Once an employee begins working in person, or the guidance expires, employers must verify I-9 documentation in person within three business days.

This extension follows the announcement that Immigrations and Custom Enforcement and the Department of Homeland Security are exploring a permanent rule to allow employers to conduct I-9 document inspections remotely. In August, the agencies released a proposed rule to “create a framework under which the Secretary of Homeland Security... could authorize alternative options for document examination procedures with respect to some or all employers.” This is a small but encouraging step towards remote document inspection and a clear acknowledgment that remote work is here to stay.

Proposed Independent Contractor Rule

We’re sure your inboxes have been filled with articles about the proposed independent contractor rule issued by the Department of Labor. Much will be said and written about the rule, but we don’t see the value of taking up too much of your time until we know the details of the final rule. We have always advised clients to evaluate whether the contractor has a business which can stand by itself even without the work that you provide to the contractor. The Department of Labor in announcing the proposed rule takes a similar approach: independent contractors are those workers who are not “economically dependent on their employer for work and are in business for themselves.” More to come on this, but we don’t believe that this is the drastic change that some legal commentators suggest.