

## Compliance During the Coronavirus Disease 2019 Escalation

Article By:

Donna L. Rudnicki

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Coronavirus Disease 2019 (COVID-19) has just been [declared a pandemic by the World Health Organization](#), and is spreading throughout the United States and beyond. As a result, some businesses, public organizations, and even some countries are going on lockdown over health concerns. Some businesses are hiring employees remotely and asking employees to work from home. As part of the onboarding process, businesses must complete the I-9 employment eligibility authorization process. As of March 12, 2020, no U.S. government entity has issued official guidance regarding any acceptable changes to the I-9 process during the pandemic. So, what can companies do to comply with strict I-9 rules while ensuring their employees' health and safety during sometimes mandatory quarantines?

According to DHS rules, the Form I-9 is used "to verify the identity and employment authorization of individuals hired for employment in the United States. All U.S. employers must properly complete [Form I-9](#) for each individual they hire . . . [including] citizens and noncitizens. Both employees and employers (or authorized representatives of the employer) must complete the form." Normally, an employer or authorized representative of the employer must physically examine each original document to determine if it reasonably appears to be genuine and to relate to the employee presenting it. Completing Section 2 of the I-9 by looking at the documents via webcam is not permissible. See [USCIS Q&A on Form I-9](#). However, new instructions recently issued by USCIS may allow for a solution to this problem during the COVID-19 outbreak and facility shutdowns.

An employer can now designate [anyone as an authorized representative to complete Section 2](#). Specifically, the instructions for the new version of Form I-9 (edition date of 10/21/2019) clarify that "[a]n authorized representative can be any person you designate to complete and sign Form I-9 on your behalf". See Page 6 of [Form I-9 Instructions 10/21/2019](#). Therefore, a notary, a family member, neighbor, or even a physician of the employee could be considered as an "authorized representative" of the employer if the employer authorized him or her during the COVID-19 pandemic, thus reducing the need for travel to a specific company worksite, etc., or allowing for an employee to work from home in compliance with I-9 regulations if quarantined.

Note that the employer will remain liable for any violations in connection with the I-9 or the verification process, including any violations committed by the person designated to act on behalf of the employer. Therefore, companies may face liability if they authorize a representative, such as a family member or friend, to verify an I-9 and that person is not knowledgeable on the Form I-9 rules and/or supporting materials.

It's important to be aware of the potential consequences for I-9 violations. Monetary penalties for knowingly hiring and continuing to employ an employee in violation range from \$573 to \$20,130 per violation, with repeat offenders receiving penalties at the higher end of that scale. Penalties for substantive violations, which includes failing to produce a Form I-9, range from \$230 to \$2,292 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations.

*This post features contributions from Ana C. Santiesteban Gutiérrez.*

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