

DHS Announces Limited I-9 Compliance Flexibility for Employers with No Employees Physically Present at a Work Location

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On March 20th, the Department of Homeland Security (DHS) announced that for the **next 60 days or within three business days after** the termination of the National COVID-19 Emergency, whichever comes first, employers and workplaces that are operating remotely may “defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9).” This means that if “physical proximity precautions” are being taken due to COVID-19 and **there are no employees at all physically present** at a work location, then employers will **not** be required to review employee identity and employment authorization documents in person. Employers **must still inspect documents and complete Section Two of Form I-9 within three days of hire**, but may do so remotely via “video link, fax or email, etc.” If employers with all employees working remotely choose to utilize the COVID-19 emergency provisions, then the instructions for I-9 completion during this time are as follows:

- During the permitted COVID-19 period, employers must provide written documentation of their remote onboarding and telework policy for each employee.
- For employees who complete the I-9 process remotely without physical inspection of documents, the employer should complete Section Two of Form I-9 by noting in the “Additional Information” form field that there was a COVID-19 physical inspection delay.
- All employees who have I-9 documents verified remotely without physical inspection must report to the employer within **three business days of normal business operations resuming** for in-person verification of identity and employment eligibility documentation, as is normally required for Form I-9.
- When the delayed in-person physical inspection occurs, the employer should add to Section Two of Form I-9 in the “Additional Information” form field OR to Section 3 if applicable, “documents physically examined on [DATE of inspection].”

DHS also specified the following related provisions:

- Any audit of subsequent Forms I-9 will use the “in-person completed date” as a starting point

for impacted employees only.

- If there is an employer with some employees physically present at a work location but newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, then DHS will evaluate the situation for I-9 compliance on a case-by-case basis.
- Employers are required to monitor the DHS and ICE websites for additional updates regarding when the extensions will be terminated, and normal operations will resume.

As a reminder, under standard I-9 compliance provisions, an employer may designate any person it chooses to serve as its authorized representative for the purposes of verifying documents in-person and completing Section Two of Form I-9. The employer is still liable for all I-9 completion and compliance requirements.

Finally, employers should develop a plan for completing and retaining I-9 records, as well as for documenting special actions taken to address fact-specific situations during COVID-19.

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