

# Form I-9 Coronavirus (COVID-19) Alert: USCIS Announces Temporary Modifications to Employment Eligibility Verification Process and E-Verify Program

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In response to the [coronavirus \(COVID-19\) National Emergency Declaration](#), the United States Department of Homeland Security (DHS) announced temporary modifications to the Form I-9, Employment Eligibility Verification process and enforcement actions. Changes range from remote verification to E-Verify's indefinite response extensions.

## COVID-19 Form I-9, Employment Eligibility Verification Social Distancing

Thousands of employers across Pennsylvania, New York, and New Jersey have temporarily shifted from physical worksite operations to remote work. To assist these employers in complying with the Form I-9, Employment Eligibility Verification requirements for new hires, [the DHS has temporarily halted the requirement that employers physically review employee identification and employment authorization documents when completing the Form I-9](#).

Employers who have shifted their normal, physical worksites to remote operations may "inspect the Form I-9 Section 2 documents remotely and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2 of the Form I-9, when normal operations resumes." Examples of remote verification include reviewing documents provided "over video link, fax, or email, etc." This change is in effect through the earlier of May 20, 2020, or three business days after the termination of the National Emergency Declaration.

If an employer chooses to implement a Form I-9 remote document review policy, the employer must:

1. Provide written documentation of their remote onboarding and telework policy for each employee and maintain evidence of meeting this requirement.
2. Inform employees who elected remote onboarding and telework of the requirement that the employee return, in person, with the original documents provided during the remote document review process, no later than three days from when normal operations resume.
3. When completing Form I-9, Section 2, at the time the employer resumes normal operations

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and conducts a physical review of the original documents the employee provided during remote verification, the employer should enter the phrase “COVID-19” in the “Additional Information” field,” together with the notation “documents physically examined on” followed by the date of actual physical examination.”

4. If the either one of the documents the employee originally presented during remote verification is expired when the physical review is conducted, the employer must conduct a reverification of the employee by completing Section 3 of the Form I-9.

The DHS clearly noted that these remote document review Form I-9 temporary modifications are applicable only “to employers and workplaces that are operating remotely. **If there are employees physically present at a work location, no exceptions are being implemented at this time for in-person verification of identity and employment eligibility documentation for Form I-9...**”

If an employer must conduct a Form I-9 verification for a new employee or a re-verification of an existing employee, either of who are subject to a COVID-19 quarantine or lockdown protocol, the DHS will evaluate each employment verification on a case-by-case basis, should a DHS audit later occur. Employers are reminded to make every effort to conduct the verification, including the designation of an authorized representative, including an employee’s family member or medical professional, to complete Section 2 of Form I-9.

## **COVID-19 DHS Employment Immigration Enforcement**

The DHS did not announce any change to immigration enforcement actions against employers. Heightened enforcement against employers remains, through the continuing increase in the issuance of Notices of Inspection (NOIs) to employers seeking review of Form I-9 and the supporting identification and employment eligibility authorization documents records. Nonetheless, employers “who were served by NOIs by the DHS during the month of March 2020 and have not already responded will be granted an automatic extension for 60 days” from the original required response date.

Employers are reminded that enforcement actions are continuing and complete compliance with Form I-9 requirements is of utmost importance to prevent civil and criminal penalties. If an employer is in a unique circumstance that prevents a verification, it is important to document the concern thoroughly, while conducting an accurate verification as soon as reasonably possible, but no later than the end of the Form I-9 process modifications the DHS announced as a result of the COVID-19 National Emergency Declaration.

## **Extension of E-Verify Resolution Deadlines**

The DHS has extended the timeframe for employees to resolve E-Verify Tentative Non-Confirmations (TNCs) when the employee is unable to resolve the TNC because of the closure of the Social Security Administration (SSA) or other government or private office to the general public.

A TNC is one of several responses the E-Verify system provides to employers enrolled in the DHS developed employer immigration compliance technology. [Through E-Verify](#), employers:

create cases based on information taken from an employee’s Form I-9, Employment Eligibility

Verification. E-Verify then electronically compares that information to records available to the DHS and the SSA. The employer usually receives a response within a few seconds either confirming the employee's employment eligibility or indicating that the employee needs to take further action to complete the case.

A TNC is the E-Verify response that necessitates an employee to take further action. The typical timeframe for an employer to resolve the matter through further action is three days. This three-day deadline for employees to respond to TNCs is automatically extended until the SSA reopens to the general public.

According to the DHS, employers must still create a new employee E-Verify case within three days of hire. If the E-Verify system returns a TNC are required to notify employees about their TNC results "as soon as possible." Then, after the employee

is notified of their TNC and decides whether to take action to resolve the TNC, the employee should acknowledge the decision on the Further Action Notice, and the employer should notify E-Verify of their employee's decision. Employees who choose to take action to resolve a TNC are referred to the SSA and/or DHS.

Moreover, employers "**may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status.**" Rather, if a response to a TNC is delayed because of the COVID-19 National Emergency Declaration, employers should select "Other" from the drop-down list of responses to TNCs and enter "COVID-19" as the reason for the delay.

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