On Friday, March 20, 2020, the U.S. Department of Homeland Security (DHS) released guidance to assist employers who are working remotely to continue hiring and re-verifying employees who must complete Form I-9.

Prior to the guidance, employers were required to complete Form I-9 by performing a tactile (physical) inspection of a new hire or existing employee’s personal identification and work authorization documents. This required an employer to come into close physical proximity with the employee, increasing risks for COVID-19 exposure.

Effective March 20, the DHS is temporarily permitting employers who are working remotely to complete Form I-9, Section 2 (for new hires) or Section 3 (for re-hires or re-verification) by viewing documents via fax, email, or video link (e.g., Skype or Zoom). There are no changes to what documents may be presented to establish an individual’s identity and ability to work legally in the U.S. An employer may still only accept documents designated as Form I-9 Acceptable Documents. An employer must also continue to adhere to all other I-9 guidance and ensure the remaining portions of the form are completed and without error.

The employer should note “COVID-19” in the Additional Information box within...
Section 2 when following the new guidance. This is sufficient until normal operations resume. Once normal operations resume, an employer must contact the employee to conduct a tactile (physical) inspection of the documents within three business days. After completing the tactile document inspection, the employer should update the Additional Information box with the notation “In-Person Inspection,” and include the date the documents were physically viewed. Employers who fail to complete the tactile inspection requirement after normal operations resume may face fines and penalties for substantive violations.

The new guidance may be followed for up to 60 days (through May 19, 2020) or up to three days after termination of the national emergency (whichever comes first). The DHS emphasizes this guidance applies only to employers who are working remotely. Employers who still have on-site employees must continue to perform tactile document inspections or use an authorized agent to complete Section 2 of the Form I-9.

Employers who received a Notice of Inspection (I-9 Audit) in the month March 2020 will also receive an automatic 60-day extension to respond to the document request. Additional extensions of time beyond 60 days may be considered by the DHS on a case-by-case basis.

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