DHS issues Guidance Relaxing Form I-9 Requirements

The Department of Homeland Security (DHS) has issued revised guidance on I-9 compliance in light of employer office closures around the country due to COVID-19. DHS announced that it will exercise its discretion to defer the physical presence requirement associated with completing Form I-9, where the employee must present physical documents to be examined by the person completing Section 2 of Form I-9 to demonstrate work eligibility.

Under the guidance, employers who are closing offices or taking precautions to limit physical contact will not be required to review the documents in person, but will need to inspect it remotely (via video, email, fax, etc.). The same rules still apply where the documents must be reviewed within three days of the employee’s start date. Employers, after reviewing the documents remotely, should complete Section 2 as normal.

Employers will then be required to review the documents in person within three business days of normal operations resuming. Employers will then “correct” the I-9 and should enter “COVID-19” as the reason for the physical inspection delay in Section 2 Additional Information field, and also add “documents physically examined” with the date of inspection.

Employers who wish to take this “remote review” option must provide written documentation of the remote onboarding and telework policy for each employee. This provision only applies to employers and workplaces that are operating remotely. For
example, if there are employees physically present at a work location, there will be no exceptions and this provision will not apply. DHS will evaluate this on a case-by-case basis. Note that any audit of these I-9s in the future would use the “in-person” completed date as the starting point.

Also, note that employers may still designate an authorized representative to act on their behalf to complete Section 2, and can be any person the employer designates, though the employer will be liable for any violations in connection to the form or verification process. The authorized representative will still need to examine the documents physically.

The above relaxed guidelines may be implemented for the next 60 days (from March 20, 2020), or within three business days after the termination of the National Emergency, whichever comes first. Any Notice of Inspections served by DHS in March 2020 will automatically be granted a 60-day extension.

**E-Verify**

**Case Creation:** Employers must still comply with creating cases for new hires within three business days from the date of hire. The date of hire must be what is on the employee’s Form I-9. If the case creation is delayed because of COVID-19, the employer should select “Other” from the drop-down list and enter “COVID-19.”

**Tentative Nonconfirmations:** In addition, due to the shutdown of Social Security offices, E-Verify will extend the timeframe to resolve SSA Tentative Nonconfirmations (TNC). This extension also applies to a limited number of DHS TNCs if the employee cannot resolve it due to public or private office closures.

During this time, if the E-Verify case is in an interim case status, the employer MUST NOT take any adverse action, even if this timeframe is extended.

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