Form I-9 Update: Department of Homeland Security Introduces Flexibility for In-Person I-9 Rules

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On March 20, 2020, the Department of Homeland Security (DHS) issued an announcement that it will relax the requirement for employers to review employee’s identity and work authorization documents in person and complete Section 2 of the Form I-9. Employers may now inspect Section 2 documents remotely (i.e., over webcam, fax, email, etc.) and obtain, inspect and retain copies of the documents within three business days.

Employers wishing to take advantage of this approach must follow these rules:

- On the Form I-9, employers must write “COVID-19” in the Additional Information field in Section 2:
Once normal business operations resume, employers must review the employee’s original documents within **three business days** and write “documents physically examined” with the date of inspection in the Additional Information field:

- Employers may take this alternative approach until **May 19, 2020**, or within three business days after the termination of the National Emergency, whichever comes first.
- Documentation of the remote onboarding/telework policies must be maintained for each employee.

Note this “workaround” only applies to employers and workplaces operating remotely. If there are employees physically present at a worksite, there is no exception to the in-person requirement for reviewing original documents for Form I-9.

Employers who do not wish to pursue this option may still follow the practice of designating
any company representative to assist in reviewing documents and completing Section 2 of Form I-9, bearing in mind that any errors are the employer’s responsibility, no matter who completes Section 2.

The DHS announcement does not cover instances where the documents presented by a new hire on the date of hire may expire by the time in-person physical review takes place. Furthermore, the DHS announcement only applies to an “exercise of discretion” to deferring the physical presence requirements associated with Form I-9 compliance. No regulations have been changed, and no rules have been proposed, so employers should be aware that taking advantage of this flexibility comes with a certain amount of uncertainty.

In addition to allowing for flexibility with I-9 rules, the DHS announcement indicated that any employers served a Notice of Inspection by DHS during the month of March that have not yet responded will be given a 60-day extension period, after which DHS will determine (again, at its discretion) if an additional extension will be granted.

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