

CLIENT ALERT

DHS Announces Flexibility in I-9 Compliance Requirements Due to COVID-19

On Friday, March 20, 2020, [the Department of Homeland Security \(DHS\)](#) announced flexibility in the requirements associated with Employment Eligibility Verification (Form I-9).

In certain situations, DHS will exercise discretion to **defer the physical presence requirements associated with Form I-9** under Section 274A of the Immigration and Nationality Act (INA).

What This Means for Employers:

If you are an employer/workplace that is operating remotely, with employees taking physical proximity precautions due to COVID-19, you are not required to review the employee's identity and employment authorization documents in the employee's physical presence.

Instead, you may inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2.

Once normal operations resume, all employees who were onboarded using remote verification, must report to their employer within three business days for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification. Once the documents have been physically inspected, you should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 "Additional Information" field, and add "documents physically examined" with the date of inspection to the Section 2 "Additional Information" field on the Form I-9, or to section 3 as appropriate.

These provisions **may be implemented** by employers for a period of 60 days from the date of the [DHS notice](#) issued on March 20, 2020 OR within 3 business days after the termination of the [Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease \(COVID-19\) Outbreak](#) issued on March 13, 2020, whichever comes first.

Be advised:

If you use this option, you must provide written documentation of an employee's remote onboarding and telework policy for each employee. This burden rests solely with the employers.

Any audit of subsequent Forms I-9 would use the "in-person completed date" as a starting point for these employees only.

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, Employment Eligibility Verification. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate this on a case-by-case basis.

Designation of an Authorized Representative:

You may designate an authorized representative to act on your behalf to complete Section 2. An authorized representative can be any person you designate to complete and sign Form I-9 on your behalf. You will be liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer's behalf.

If you have any questions, please feel free to reach out to us.

HAHN LOESER'S IMMIGRATION PRACTICE GROUP:



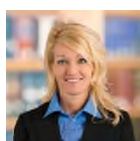
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