

DHS UPDATES FORM I-9 REVIEW REQUIREMENTS

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On March 20, 2020, the Department of Homeland Security (DHS) **announced** that it will temporarily allow employers to electronically verify documents associated with the Employment Eligibility Verification (commonly known as Form I-9) under Section 274A of the Immigration and Nationality Act (INA).

The temporary relaxation of in-person document verification is effective for 60-days from the March 20, 2020, notice or up to three (3) business days after the termination of the COVID-19 **national emergency proclamation**, announced on March 13, 2020, whichever comes first.

Traditionally, unless exempt, employees hired after Nov. 6, 1986, were required to complete Section 1 of Form I-9 at the time of hire, i.e. the first day of employment. Until the current pandemic, employers had historically been required to physically review an employee's supporting documentation and fully complete Section 2 of Form I-9 within three business days following the time of hire, or at the time of hire, if the employee is hired for fewer than three days.

But in light of physical proximity precautions related to COVID-19, the DHS will now allow employers to inspect Section 2 documents remotely, whether by video link, fax, or email. Employers should obtain, inspect, and retain copies of these documents, however they are produced, within the regularly required three business day period after the time of hire. According to the DHS, employers should also:

- Cite "COVID-19" in the Section 2 "Additional Information" field as the reason for the physical inspection delay;
- Perform a physical inspection of documents within three business days after normal operations resume; and
- Adjust Section 2 "Additional Information" or Section 3 of Form I-9 with a note that states, "documents physically examined," and the date of examination.

This modification of the traditional rule only applies to employers and workplaces that are operating remotely or subject to COVID-19 quarantine or lockdown protocols. The temporary exception is not allotted to employers that have any employees physically present at the work location. Instead, employers may allow a notary or third-party authorized representative to complete and sign Section 2 of Form I-9 on their behalf. The employer is still liable, however, for any violations of the authorized representative in connection with the form or the verification process. DHS will continue to monitor the ongoing National Emergency and provide updates and guidance, as needed.

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