



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION

March 16, 2020

The Honorable Chad Wolf
Department of Homeland Security, Acting Secretary
3801 Nebraska Avenue NW
Washington, DC 20016

Sent by email

Re: DHS Guidance Concerning Form I-9 Compliance and COVID-19

Dear Acting Secretary Wolf:

I write to you on behalf of the American Immigration Lawyers Association (AILA) concerning the impact of the COVID-19/coronavirus global pandemic and public health emergency on U.S. businesses, specifically regarding I-9 compliance requirements. Given the declaration of a national emergency and the requirements by many states, municipalities and companies to practice social distancing, we request the Department of Homeland Security (DHS) immediately issue guidance providing flexibility in the Form I-9 verification, E-Verify and compliance process.

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

Many of our members provide counsel to U.S. businesses concerning the employment verification process in order to ensure that they properly comply throughout the authorization and reauthorization of their workforce. Employers understand the requirement to verify and reverify I-9 identity and documents *in person* and that they may use a designated representative to complete that process. However, the nature of the national public health emergency brought on by the COVID-19 global pandemic and recommendations from federal, state, and local government officials, is such that compliance with these requirements becomes impossible if the employer follows those recommendations to avoid spreading the virus.

In light of these concerns, AILA requests that the Department of Homeland Security, immediately issue guidance concerning Form I-9 verification and reverification, E-Verify and compliance requirements for U.S. businesses throughout the remainder of this national emergency. We recommend that the guidance includes, but is not limited to, the following measures:

- A temporary suspension of, or greater leniency in, the I-9 completion timeframe requirement for all businesses during this national emergency.
- Video or other virtual verification of acceptable documentation, instead of mandatory in-person documentary verification for a temporary period of time (which could allow for completion of E-Verify), provided the employer physically examines the acceptable I-9 documents at a later time when reasonable to do so.
- Official statement that a reasonable approach will be taken when considering compliance for new hires as well as for reverification of employment of existing employees during this time.

These actions would be a significant step in preventing actions that endanger public health and US worker safety when a company is complying with legal requirements. ‘Business as usual,’ without a relaxation of the I-9 requirements, translates into a potential loss of employment and wages for a fragile economy, at a time when it is critical that businesses continue to operate, let alone onboard new employees.

We also ask that all routine non-criminal immigration enforcement operations and Form I-9 inspections that would result in new inspection notices be placed on hold for a reasonable period and that Homeland Security Investigations (HSI) direct their Special Agents and Auditors to provide adequate extensions to the Form I-9, Notice of Inspection (NOI) deadlines related to last week’s round of Form I-9 Notices of Inspection.

AILA stands ready to disseminate any guidance from the agency to our members and their clients and welcomes questions from the agency concerning policies and guidance that would address responsible employers’ concerns. Working together, with clear guidance from the Department, employers can ensure that their staff are employment eligible without further endangering their employees’ health or safety.

For additional information, please feel free to contact Shev Dalal-Dheini at 202-507-7621 or sdalal-dheini@aila.org. Thank you for your important work during this time.

Sincerely

Katie Minervino
Chair of the Verification & Documentation Liaison Committee, AILA

Sharvari (Shev) Dalal-Dheini
Director of Government Relations, AILA

CC:
Kenneth T. Cuccinelli, Senior Official Performing the Duties of the Deputy Secretary for the Department of Homeland Security;
Matthew Albence, Deputy Director and Senior Official Performing the Duties of the Director ICE;
Carmin DeRose, ICE HSI Chief, Worksite Enforcement;
Michael Dougherty, USCIS Ombudsman;

Tammy Meckley, Associate Director, Immigration Records and Identity Services Directorate;
Victoria Porto, Chief, USCIS Verification Division;