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DHS announces flexibility in requirements related to Form I-9 compliance

March 31, 2021 Update

Effective April 1, 2021, DHS is also providing the following update to its Form I-9 flexibilities guidance.

The flexibility announcement issued on March 20, 2020, notes that DHS will evaluate certain COVID-19-related Form I-9 completion practices on a case-by-case basis as they relate to the physical inspection of Form I-9 documentation. Accordingly, as of April 1, 2021, the requirement that employers inspect employees' Form I-9 identity and employment eligibility documentation in-person applies only to those employees who physically report to work at a company location on any regular, consistent, or predictable basis.

If employees hired on or after April 1, 2021, work exclusively in a remote setting due to COVID-19-related precautions, they are temporarily exempt from the physical inspection requirements associated with the Employment Eligibility Verification (Form I-9) under Section 274A of the INA until they undertake non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier.

The flexibilities discussed here do not preclude employers from commencing, in their discretion, the in-person verification of identity and employment eligibility documentation for employees who were hired on or after March 20, 2020, and presented such documents for remote inspection in reliance on the flexibilities first announced in March 2020.

AILA Doc. No. 20032033. (Posted 5/19/21)

DHS will continue to monitor the ongoing national emergency and provide updated guidance as needed. Employers should monitor the DHS and ICE websites for additional updates regarding the status of Form I-9 completion flexibilities.

Due to precautions being implemented by employers and employees related to physical proximity associated with COVID-19, the Department of Homeland Security (DHS) announced today that it will exercise discretion to defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9) under Section 274A of the Immigration and Nationality Act (INA). Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in the employee's physical presence. However, employers must 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. Employers also should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field **once physical inspection takes place after normal operations resume**. Once the documents have been physically inspected, the employer should 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 this notice OR within 3 business days after the termination of the National Emergency, whichever comes first.

Employers who avail themselves of this option must provide written documentation of their remote onboarding and telework policy for each employee. This burden rests solely with the employers.

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, the employer should 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.

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

This provision only applies to employers and workplaces that are operating remotely. 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. Additionally, employers may designate an authorized representative to act on their behalf to complete Section 2. An authorized representative can be any person the employer designates to complete and sign Form I-9 on their behalf. The employer is liable for any violations in connection with the form or

the verification process, including 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.”

Effective March 19, 2020, any employers who were served NOIs by DHS during the month of March 2020 and have not already responded will be granted an automatic extension for 60 days from the effective date. At the end of the 60-day extension period, DHS will determine if an additional extension will be granted.

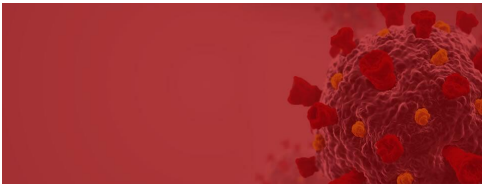
Going forward DHS will continue to monitor the ongoing National Emergency and provide updated guidance as needed. Employers are required to monitor the DHS and ICE websites for additional updates regarding when the extensions will be terminated, and normal operations will resume.

RELATED ARTICLES

ICE announces extension, new employee guidance to I-9 compliance flexibility

ICE announces another extension to I-9 compliance flexibility, no more extensions for employers to respond to NOIs served in March

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The agency's full response to COVID-19 can be viewed at [ICE.gov/coronavirus](https://ice.gov/coronavirus).

Updated: 03/31/2021


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