

I-9 Verification Exception during the Coronavirus Pandemic

Due to the COVID-19 crisis and employers taking physical proximity precautions, the United States Department of Homeland Security (DHS) announced a temporary modification to the Form I-9 verification process and enforcement. The requirement that employers need to physically review employee identification is not being enforced until May 20, 2020, or 3 business days after the termination of the National Emergency Declaration.

Employers who have shifted their normal, physical worksites to remote operations may “inspect the Form I-9 Section 2 documents remotely and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2 of the Form I-9, when normal operations resumes.” Remote examples include “over video link, fax, email, etc.”

Once business resumes and you inspect Section 2 documents in person, employers must note “COVID-19 as the reason for the delay in the section’s “additional information” field, as well as “documents physically examined” with the date of inspection the that field.

This is only an exception for businesses who are operating remotely, if there are employees present at a work location, no exceptions are made. However, if the 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.

Employers not eligible for the exception still have options, however. The form allows an employer to appoint a representative to review new hires' documents. This can be a law firm, a vendor, a notary or a local employee, among others. Any employee can perform document inspection for HR. During normal times, that's not a best practice but in pressing times like these, employers can provide training inside and outside the company.

Employers who use this exception must provide written documentation of their remote onboarding and telework policy for each employee. If an employer chooses to implement a Form I-9 remote document review policy, the employer must:

1. Provide written documentation of their remote onboarding and telework policy for each employee and maintain evidence of meeting this requirement.
2. Inform employees who elected remote onboarding and telework of the requirement that the employee return, in person, with the original documents provided during the remote document review process, no later than three days from when normal operations resume.
3. When completing Form I-9, Section 2, at the time the employer resumes normal operations and conducts a physical review of the original documents the employee provided during remote verification, the employer should enter the phrase “COVID-19” in the “Additional Information” field,” together with the notation “documents physically examined on” followed by the date of actual physical examination.”
4. If either one of the documents the employee originally presented during remote verification is expired when the physical review is conducted, the employer must conduct a reverification of the employee by completing Section 3 of the Form I-9.