

The U.S. Department of Homeland Security Announces Flexibility in Requirements Related to Form I-9 Compliance

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The U.S. Department of Homeland Security (DHS) recently announced that it will exercise discretion to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) process. Such discretion is being exercised due to precautions being implemented by employers and employees related to the COVID-19 pandemic.

According to the DHS announcement, 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 Form I-9 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three (3) business days for purposes of completing Section 2 of the Form I-9. Employers have additional obligations, including preparation of a remote onboarding policy, and review of physical documents and specific notations to the Form I-9 when normal operations resume.

These provisions may be implemented by employers for a period of 60 days from the date of the DHS notice OR within three (3) business days after the termination of the National Emergency, whichever comes first.

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Business Immigration

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IMPORTANT NOTE: 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 Form I-9 documentation.