



## **ICE announces extension of flexibility in rules related to Form I-9 compliance**

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Due to precautions being implemented by employers and employees related to physical proximity associated with COVID-19, the Department of Homeland Security (DHS) announced 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).

DHS once again is extending its flexibility regarding the physical presence requirements for I-9 inspection for another 30 days until **September 19, 2020**, due to the ongoing precautions related to the COVID-19 pandemic. Eligible employers may continue to inspect Section 2 documents remotely (e.g., over video... fax, or email).

- ✓ 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 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.

The option for remote inspection only applies to remote workers. What if I have employees working both remotely and reporting in person to work?

On a temporary basis due to COVID-19, employers and workplaces that are operating remotely have the option to inspect Form I-9 documents remotely.

Employers who choose the remote inspection option may inspect the Section 2 documents over video link, fax, email, etc.

Employers should obtain, remotely inspect, and retain copies of the identity and employment eligibility documents their employees provide, within three business days for purposes of completing Section 2.

## E-Verify

With one exception, DHS is maintaining its E-Verify compliance requirements during the coronavirus pandemic. Accordingly, the following applies:

E-Verify employers must continue to create case inquiries by the end of the third business day after hire. There is no extension of time even when an employer is operating remotely.

Best Practice: E-Verify requires that all late case inquiries be explained. Employers that in good faith attempt to comply with the E-Verify timelines but are delayed by the pandemic should state so.

Employment Eligibility Verification Form I-9  
Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9  
OMB No. 1615-0047  
Expires 10/31/2022

Section 2. Employer or Authorized Representative Review and Verification  
(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents.")

Employee Info from Section 1	Last Name (Family Name) Wash,Logan	First Name (Given Name) George	M.I. N/A	Citizenship/Immigration Status 2
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List A Identify and Employment Authorization	OR	List B Identify	AND	List C Employment Authorization
Document Title N/A		Document Title State's License (used by state/territory)		Document Title Social Security card (identification)
Issuing Authority N/A		Issuing Authority N/A		Issuing Authority Social Security Administration
Document Number N/A		Document Number 123456		Document Number 123456789
Expiration Date (if any) (mm/dd/yyyy) N/A		Expiration Date (if any) (mm/dd/yyyy) 02/12/2022		Expiration Date (if any) (mm/dd/yyyy) N/A

Document Title N/A	Additional Information Remote inspection completed on 03/30/2020	QR Code - Section 2 Do not write in this space
Issuing Authority N/A	COVID-19 Document physically examined on mm/dd/yyyy by HR Manager Betty Ross	
Document Number N/A		
Expiration Date (if any) (mm/dd/yyyy) N/A		



When asked by E-Verify to explain, such employers should select “other” from the options shown and enter “COVID-19” in the associated dialog box. DHS considers the reason for late E-Verify case inquiries when deciding whether to commence an E-Verify audit or special monitoring of the employer’s compliance.

If E-Verify is unable to confirm employment authorization, it will issue a tentative non confirmation (TNC). Regardless of whether the employer is operating remotely, the employer must inform the employee promptly of the TNC and offer the employee the opportunity to contest.

As they inspect the employee’s documents remotely and determine whether the documents reasonably appear to be genuine and relate to the employee, they should create an E-Verify case for the employee.

They should still follow current guidance and create the E-Verify case for their new hire within three business days from the date of hire.

Employers must use the hire date from the employee’s Form I-9 when creating the E-Verify case.

If case creation is delayed due to COVID-19 precautions, select “Other” from the drop-down list, and enter “COVID-19” as the specific reason.



### I-9 Form Remote Option Next Steps

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

Identity and Employment Authorization	Identity	Employment Authorization
Document Title <input type="text"/>	Document Title <input type="text"/>	Document Title <input type="text"/>
Issuing Authority <input type="text"/>	Issuing Authority <input type="text"/>	Issuing Authority <input type="text"/>
Document Number <input type="text"/>	Document Number <input type="text"/>	Document Number <input type="text"/>
Expiration Date (if any) (mm/dd/yyyy) <input type="text"/>	Expiration Date (if any) (mm/dd/yyyy) <input type="text"/>	Expiration Date (if any) (mm/dd/yyyy) <input type="text"/>
Document Title <input type="text"/>	<b>Additional Information</b> Section 2 completed pursuant to March 20 COVID-19 DHS announcement for remote hires. Physical inspection of documents presented will take place after normal operations resume.	
Issuing Authority <input type="text"/>		
Document Number <input type="text"/>	QR Code - Section 2.4.3 Do Not Write In This Space	
Expiration Date (if any) (mm/dd/yyyy) <input type="text"/>	Documents physically examined on: _____, 2020	
Document Title <input type="text"/>	Name - _____ Title - _____	
Issuing Authority <input type="text"/>		
Document Number <input type="text"/>		

for these employees only.

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.***

They also must ensure they review the original ID documents and must provide written documentation of their remote onboarding and telework policy for each covered employee.

### **Going Forward**

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.



<https://www.ice.gov/news/releases/ice-announces-another-extension-i-9-compliance-flexibility>

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