



GMS Flash Alert

Immigration Edition

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United States - DHS Defers Physical Inspection Requirements for Form I-9

On March 20, 2020, the U.S. Department of Homeland Security (DHS) announced flexibility in requirements related to Form I-9 compliance in response to the COVID-19 pandemic as U.S. employers have rapidly shifted toward remote work arrangements to protect the health and safety of their workforce.¹

WHY THIS MATTERS

U.S. employers must complete Form I-9, Employment Eligibility Verification requirements to verify the identity and employment authorization of their U.S. workforce including both U.S. citizen and non-citizen workers. Failure to properly comply with Form I-9 requirements can result in monetary fines imposed on the employer, disbarment from government contracts, and, in certain situations, criminal penalties.² Several sections of the Form I-9 require that the employee present his identity and employment authorization documents to the employer for physical inspection.³

Under the current circumstances created by the COVID-19 pandemic and with employers in the U.S. shifting business operations to accommodate remote work arrangements, the DHS will allow employers to defer the in-person document verification requirement.

More on the New I-9 Provisions

The new guidance from DHS provides that employers with employees self-quarantining or working remotely due to COVID-19 will not be required to physically inspect the employee's identity and employment authorization documents in the employee's physical presence. However, employers must still review the 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 of the Form I-9. Employers 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 business operations resume. Once the documents have been physically inspected, the employer should add "documents

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physically examined” with the date of inspection to the Form I-9 Section 2 Additional Information field, or to Section 3 as appropriate.

These provisions allowing deferment of the physical inspection requirement may be implemented by employers for a period of 60 days from March 20, 2020, or within three business days after the Administration’s termination of the National Emergency, whichever comes first.

Once normal business operations resume, all employees who were on-boarded using remote verification, must report to their employer within three business days for in-person verification of identity and employment eligibility documentation to complete the Form I-9.

Employers that avail themselves of the remote verification procedures must provide written documentation of the company’s remote on-boarding and telework policy for each employee. Finally, the DHS has provided that any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees when reviewing Form I-9 for completeness and accuracy.

These new Form I-9 remote verification provisions only apply to employers and workplaces that are operating remotely. If there are employees physically present at a work location, the DHS has stated no exceptions are being implemented for the in-person verification Form I-9 requirement. If newly-hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate the employer’s application of remote verification procedures on a case-by-case basis.

KPMG NOTE

For employers unable to avail themselves of the remote verification provisions, the new edition of the Form I-9 allows employers to designate an authorized representative to act on their behalf to complete Section 2. An authorized representative can be any person, including the employee’s family or household members, the employer designates to complete and sign Form I-9 on their behalf. (For prior coverage on this see GMS Flash Alert 2020-080 (March 19, 2020).)

The employer continues to remain ultimately liable for any violations relating to the form’s completeness and document verification process, even if the violations were committed by the designated person acting on the employer’s behalf.

FOOTNOTES:

- 1 See the DHS [announcement](#).
- 2 For more information on the current civil fine amounts please [click here](#).
- 3 For the I-9 Instructions, [click here](#).

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in Canada



Chelsea Hsieh

**Senior Manager/Senior Attorney,
U.S. Immigration**

KPMG Law LLP – Tax + Immigration,
Canada

Tel. +1-416-943-7874

chelseahsieh@kpmg.ca

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