



GMS Flash Alert

Immigration Edition

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United States - Flexibility in Physical Inspection Requirements for Form I-9 Extended

On June 16, 2020, the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) extended flexibility in requirements related to Form I-9 compliance for U.S. employers operating 100 percent remotely due to the ongoing COVID-19 pandemic.¹

This relaxation in I-9 verification, which only defers the in-person physical inspection requirement on a temporary basis, was implemented on March 19, 2020, to accommodate remote work arrangements.¹ The expiration date for these accommodations is now July 19, 2020.

WHY THIS MATTERS

Under the current circumstances created by the COVID-19 pandemic, employers are offered flexibility and need not review the employee's documents in their physical presence.² Instead, employers may choose to inspect the relevant documents remotely (via video, fax, or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for the purposes of completing Section 2.

Further, to comply with this temporary guidance, employers that avail themselves of the remote verification procedures must provide written documentation of the company's remote on-boarding and telework policy to each new employee. This could mean additional administration for employers.

Background

To comply with federal law, 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. Several sections of the Form I-9 require that the employee present his identity and employment authorization documents to the employer for physical inspection. 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.³

Further Details on I-9 Compliance during Coronavirus Pandemic

Once regular 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. The employer should then add “documents physically examined” with the date of inspection, as appropriate.

If there are employees physically present at a work location, DHS has indicated that 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 stated that it will evaluate this on a case-by-case basis.

Further, 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.

KPMG NOTE

Finally, E-Verify employers should continue to follow current guidance and create cases for their new hires within three business days from the date of hire. Employees are also given more time to resolve a TNC due to Social Security Administration closures. Employers cannot take adverse action against an employee whose E-verify case is in interim status.

Employers must monitor the DHS and ICE websites for additional updates about when the extensions end and normal operations resume.

FOOTNOTES:

1 ICE [Announcement](#) (June 16, 2020);

DHS [Announcement](#) (June 16, 2020);

[Initial Guidance issued by ICE](#) (March 19, 2020).

2 For previous coverage, please see the following issues of *GMS Flash Alert*: [2020-159](#) (April 8, 2020) and [2020-095](#) (March 23, 2020).

3 Instructions for Form I-9 are available [here](#).

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Contact us

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