

DHS Announces Flexibility in Requirements Related to Form I-9 Compliance for Covid-19

In response to the Proclamation on Declaring a National Emergency the Department of Homeland Security (DHS) announced that it will exercise discretion to defer the physical presence requirements for Employment Eligibility Verification (Form I-9).

As a result of the COVID-19 epidemic, more employers are allowing and encouraging employees to work from home in an effort to protect the health of their employees and customers. Employers are working ensure the continuation of their daily business through ongoing “Stay Home, Stay Healthy” social distancing orders, including hiring and onboarding new staff and completing required paperwork like the I-9.

Before March 20, 2020

Federal regulations required ALL employers to examine documents in person within three business days of the employee’s start date.

After March 20, 2020

Federal regulations will temporarily allow employers who are only operating remotely to examine documents remotely within three business days of the employee’s start date. These new regulations **do not** apply to employers who have any employees still physically present in the work location, even if the new employee will only be working remotely. DHS may make exceptions on a case-by-case basis if the new employee is subject to quarantine or a lockdown.

What is “Remote Viewing”

Employers may inspect documents via video conference, fax, or email, and must obtain and retain a copy of the documents. Employers who inspect documents remotely must provide written documentation of their remote onboarding and remote working policy for each I-9.

How long are these regulations in place?

As of March 20, 2020, remote reviewing regulations will be in place for a period of 60 days from March 20, or until 3 days after the termination of the National Emergency (whichever comes first). This timeframe is subject to change.

What happens after 60 days/ 3 days after the National Emergency ends?

When operations return to “normal,” all employees who were on-boarded remotely must provide their verification documents to their employer in-person. Employees will have 3 business days to re-complete the identity verification. Employers may then complete the I-9 form; in Section 2 employers should enter “COVID-19” as the reason for delay, and note the date of the physical inspection.