

DHS Relaxes I-9 Requirements for New-Hires Impacted by COVID-19 and USCIS Extends Timeframe for E-verify TNCs

Labor & Employment Law Update

By Sara Zorich on March 24, 2020

On March 20, 2020, the Department of Homeland Security (“DHS”) announced that it would relax its “physical proximity” requirements associated with completion of Section 2 of the Form I-9. Employers can take advantage of this relaxed standard **ONLY IF** the entire workforce is completely working remotely. If there are employees physically present at the employer’s worksite, there is no exception to the in-person requirement for reviewing original documents for the Form I-9. However, note, DHS will look at the situation on a case-by-case basis if the employee cannot be physically present due to a quarantine or lockdown order. This relaxed standard will be applicable for a period of 60 days from March 20th or within 3 business days after the termination of the National Emergency, whichever comes first.

If the exception applies the employer must do the following to complete Section 2 of the Form I-9 within 3 days of the employee’s first day of work for pay:

- Inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.)
- Obtain, inspect, and retain copies of the documents
- Complete Section 2

After normal business operations resume, the employee and employer must do the following:

- Employee must bring in the original documents that were used to support the Form I-9 within 3 business days so the employer may review them.
- After the employer physically reviews the document in person, they should enter “COVID-19” as the reason for the physical inspection delay in the Section 2 Additional Information field.
- The employer should also 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.

As an alternative, an employer may designate an authorized representative to complete and sign Form I-9 on their behalf. Note the employer is liable for that person's actions related to completing the Form I-9 and Form I-9 compliance.

E-Verify

USCIS has established new temporary policies that apply to the E-verify process:

- Employers are still required to create cases for their new hires within three (3) 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.
- Employers may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status.

Further, on March 21, 2020, USCIS announced that it is extending the time frame to take action to resolve Social Security Administration (SSA) and DHS Tentative Nonconfirmations (TNCs) due to closures. The employer must notify the employee about their TNC result as soon as possible. After the employee is notified of their TNC and decides whether to take action to resolve the TNC, the employee should acknowledge the decision on the Further Action Notice, and the employer should notify E-Verify of the employee's decision. Employees who choose to take action to resolve a TNC are referred to SSA and/or DHS.

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