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## COVID-19 FAQ: Suspension of Physical Inspection Requirement for I-9 Verification due to COVID-19

On March 20<sup>th</sup>, 2020 ICE announced the suspension of the physical inspection requirement for I-9 verification due to COVID-19. I-9 Compliance affects all US employers not just employers who employ foreign nationals. Normally DHS has a strict requirement that I-9 work authorization documents must be examined in the original. Today they relaxed that requirement in response to COVID-19.

The new policy, which is available on ICE's website (<https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>) states that 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. It does require employers to 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 should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field.

Once normal operations resume the employer must inspect the documents within 3 business days and 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 "documents physically examined" as a starting point for these employees only. 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 provision only applies to employers and workplaces that are operating remotely. If there are employees physically present at a work location, *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 will evaluate this on a case-by-case basis.

Additionally, employers may designate an authorized representative to act on their behalf to complete Section 2. You can find the rules by googling "I-9 designated agent"

<https://www.uscis.gov/i-9-central/whats-new/completing-form-i-9-remote-hire>). This agent is usually a notary public – it could be anyone (friend, family member of the employee) BUT the employer is liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer’s behalf.”











