



FAQs For Employers Navigating Relaxed I-9 Verification Requirements

Insights

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Although the Department of Homeland Security (DHS) recently relaxed I-9 requirements for employers operating remotely as a result of the COVID-19 crisis, employers are still left with some questions on how to meet their obligations in this uncertain time. Our Global Immigration Practice Group has assembled the most common questions and provided best practices here.

The Basics: What Are The New Rules?

Under federal guidance, employers are temporarily no longer be required to review an employee's identity and work authorization documents in the employee's physical presence. Instead, inspection of these documents can be conducted remotely (e.g., by video, fax, or email).

According to the U.S. Citizenship and Immigration Services (USCIS), "if employers are performing inspections remotely (e.g., over video link, fax or email, etc.) they must obtain, inspect, and retain copies of the Section 2 documents within three business day of hire. In addition to completing Section 2, Employers also should enter 'COVID-19' in the Additional Information field."

Then, when "normal operations resume," all employees whose documents were presented via remote verification must, within three business days, undergo the required "in-person" examination of documents. The person conducting the physical examination should write the words "documents physically examined" in the Additional Information box in Section 2, and should include their name and the date of inspection.

It is important to keep in mind that the DHS's relaxed requirements apply *only* to employers who are operating remotely. According to the guidance, if there are employees physically present at a work location, then you must follow the normal in-person physical inspection rules. However, if newly hired employees or existing employees of an employer who still has employees present at a work location are subject to COVID-19 quarantine or lockdown protocols, "DHS will evaluate this on a case-by-case basis."

Frequently Asked Questions About The New I-9 Guidance

While employers appreciate the DHS's temporary relaxation of the in-person document inspection rules, some questions are not addressed by either DHS or USCIS. Here are the most common questions we have seen and the best practices to follow.

1. ***How is an employee expected to fill out Section 1?***

The announcement makes clear that employees are still required to fill out their section (Section 1) of the I-9 no later than the first day of employment. But DHS's announcement is silent on how employees will complete Section 1 of the I-9 if they are operating remotely.

You can presumably email the Form I-9 to the employee, have the employee complete Section 1, sign, date, scan and email the completed Section 1 back to you. For employees without a home printer and/or scanner, you should consider having them provide Section 1 in the same way they provided their documents (by video, smart phone photo, fax or other electronic method).

Once operations resume, the employee should bring the original signed Section 1 to your worksite.

2. ***If we have a policy of not keeping copies of documents presented as part of the I-9 process, what should we do with our copies of the remotely provided documents after the in-person inspection occurs?***

As noted, the announcement clearly requires employers conducting remote document reviews to keep copies of the documents provided to them (for example, by taking screen shots, pictures of the documents by camera phone, and other methods). But the announcement is silent as to what you should do with those electronic copies of documents after the in-person document review, in the event you do not, as a policy, keep copies of documents submitted as part of the I-9 process.

The safest course of action is to print out the electronic copies of documents received remotely. But instead of keeping them with the employee's I-9, keep them in a separate file until DHS clarifies what should be done with them.

3. ***Is the employee required to bring in hard copies of the same documents they provided remotely?***

The government has made it clear that you are not supposed to request or even suggest that employees provide any specific document or documents when filling out a Form I-9. Here, the announcement seems to assume employees will bring in for inspection the same document or documents they provided remotely, but does not specifically say so.

Because the employee has already made their choice of documents when they provided them remotely, DHS may find it reasonable for you to ask to see hard copies of the same document(s). If the employee refuses or has lost one or more of those document(s), you may consider filling out a new Section 2 and attaching it to the original Section 2, with a brief explanation in the Additional Information field.

[Ed. Note: The federal government recently issued an update regarding expired List B documents. If the document expired after March 1, 2020, and is subject to an automatic renewal policy by the issuing authority (e.g., many states have announced that drivers' licenses expiring after March 1, 2020, will be automatically extended), simply notate the expiration date on the document and mark "COVID-19 EXT" in the Additional Information Field. Other than in-person review, no further action is needed. However, if the issuing authority has not announced an automatic renewal rule, the employer may still accept the document, notate the expiration date and enter "COVID-19" in the Additional Information Field. Then, within 90 days after DHS's termination of this temporary policy, the employee will be required to present a valid unexpired document to replace the expired document presented when they were initially hired.]

Here is where DHS provides some guidance as to the question of whether an employee must present the same document(s) they provided remotely, or whether the employee may provide different documentation later on. According to the DHS's announcement, "It is best if the employee can present the replacement of the actual document that was expired, but if necessary, the employee may choose to present a different List A or List B document or documents and record the new document information in the Additional Information Field." Accordingly, rather than fill out and attach a new Section 2, per this guidance, if an employee provides different documentation than they did originally, the issue can be addressed in the Additional Information Field.]

4. *What triggers the determination that "normal operations" have resumed?*

The announcement states that within three business days after you resume "normal operations," the in-person document review must occur. But what if you implement a partial resumption of operations, scaled back operations, or even just start a test run of operations? What if you call some of your employees in to your worksite in preparation for returning to normal operations?

The recommended approach is to determine if the employee is going to be required to physically come into the office as part of the resumption of operations, whether to attend orientation, pre-employment training, or other reason. If the employee is scheduled to come in to the workplace for only a day or two, or even for only a few hours, you should instruct them to bring their original I-9 document(s) with them, and you should conduct the in-person inspection at that time.

In short, rather than bank on an argument that Section 2 was not filled out late because "normal operations" had not yet commenced, you should err on the side of doing the document inspection as early in the process as possible (on a case-by-case basis), rather than later.

Conclusion

As you begin the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may

learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, any attorney in our [Global Immigration Practice Group](#), or any member of [our Post-Pandemic Strategy Group Roster](#).

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