

Blog Post

New I-9 Form Required but Verification Relaxed for Some Employers

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By Rachel L. Perez

Amidst the fast changing pace of employer benefits and obligations during the COVID-19 pandemic, the Department of Homeland Security (DHS) has implemented changes to ensure that immigration worksite compliance continues. Beginning May 1, 2020, employers must use the newer 10/21/19 edition of Form I-9, Employment Eligibility Verification, but may also benefit from relaxed I-9 procedures intended to comply with social distancing guidelines.

The Employment Eligibility Verification form published by the U.S. Citizenship and Immigration Services (USCIS) has changed periodically from its initial one-page document two decades ago, to the current three-page document. At the time of executing Form I-9, employers must be sure to complete the current accepted version of the form or risk being fined. Employers should ensure that their onboarding staff is aware of and stays up-to-date on the ever-changing Form I-9 versions and dates of acceptance, as listed below:

- From January 31, 2020, until April 30, 2020, Form I-9 revised on 07/17/17 N and Form I-9 revised on 10/21/19 are both acceptable.
- As of May 1, 2020, Form I-9 revised on **10/21/19** is the **only acceptable version** of the I-9 form that employers can use.

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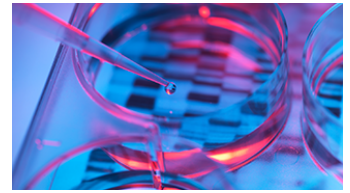
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In light of national and local social distancing guidelines, employers may benefit from temporary changes in I-9 procedures when onboarding or reverifying an employee remotely. On March 20, 2020, DHS confirmed that employers may defer the I-9 physical presence requirements until May 19, 2020, or within three business days after termination of the National Emergency, **whichever comes first**. Instead of verifying the documents in the physical presence of the employee, employers who are taking physical proximity precautions due to COVID-19 must:

1. Inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.);
2. Obtain, inspect, and retain copies of the documents within three business days (of the employee's first day of employment for wages) for purposes of completing Section 2;
3. Attach a copy of the remote onboarding and telework policy and supporting paperwork to the Form I-9 of each employee who is onboarded using remote verification due to COVID-19;
4. Enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field of Form I-9; and
5. Within three business days of the commencement of normal operations, all employees who were onboarded using remote verification must report to their employer for in-person verification of identity and employment eligibility documentation for purposes of completing Form I-9. The employer must physically inspect the original documents and make a note in the Section 2 "Additional Information" field indicating "documents physically examined" with the date of physical inspection and name of the staff member that verified the documents.

Employers should maintain a list of all employees who are onboarded using remote verification due to

COVID-19, in case a government worksite audit occurs in the future.

It is important to note that the temporary procedures outlined above only apply to employers and workplaces that are operating remotely. According to the DHS, “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.”

Employers also should be aware that if an employee has not been issued a social security number because Social Security Administration offices are closed, but is otherwise eligible to work for an employer that is enrolled in the E-Verify Program, the employer should note this information and insert “COVID-19” in the Section 2 “Additional Information” field of the Form I-9.

As employers adapt working conditions to comply with local safety and health guidelines during the COVID-19 pandemic, it is important to keep in mind that compliance with immigration laws must continue. DHS is making concessions periodically that benefit employers without compromising employees’ health and well-being.

If you have questions regarding immigration compliance, please contact your Akerman lawyer.

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