

Department of Homeland Security: Temporary Flexibility for Employers' I-9 Compliance

By Michael H. Neifach & Amy L. Peck

March 23, 2020

Meet the Authors



Michael H. Neifach

Office Managing Principal
(703) 483-8300
Michael.Neifach@jacksonlewis.com



Amy L. Peck

Principal
402-391-1991
Amy.Peck@jacksonlewis.com

Related Services

COVID-19
Disability, Leave and Health
Management
Immigration

The Department of Homeland Security (DHS) has announced that, because of the National Emergency due to the coronavirus (COVID-19) pandemic, employers may temporarily inspect Form I-9, Employment Eligibility Verification, Section 2 documents remotely (*e.g.*, over video link, fax or email, and so on) and obtain, inspect, and retain copies (rather than originals) of those documents until normal business operations resume.

This policy will remain in effect until May 18, 2020, or until three business days after termination of the National Emergency, whichever comes first. This timeframe could be extended by the government in a future announcement, if necessary.

In making the policy more flexible, DHS is recognizing that companies and organizations are having to temporarily shift to a remote working basis.

Eligible Employers, Workplaces

- Only applies to employers and workplaces operating remotely.
- If HR is remote or inaccessible to employees, physical proximity restrictions apply, or newly hired employees or existing employees are subject to quarantine or lockdowns, this option may be available on a case-by-case basis.
- Employers may still rely on using authorized representatives to act on their behalf to complete Section 2. The authorized representative may be any person. Employers must keep in mind they remain liable for any violations committed by an authorized representative.

Key Requirements

Even with the new flexibility, the three-day rule still applies — employers must conduct the remote inspections within three business days of the employee's start date and retain the documentation provided.

In addition:

- Employers should enter "COVID-19" as the reason for the physical inspection delay in Section 2 Additional Information field.
- Employers using E-Verify should submit cases within three business days of the remote inspection.
- Once normal business operations resume, employees onboarded remotely must report within three business days for in-person verification.
- Once documents have been physically inspected, employer should add "documents physically examined" with the date of inspection to the Section 2 Additional Information field or to Section 3, as appropriate. If the original certifier is not available for the physical re-examination, a new Section 2 should be completed and

signed by the employer.

- Employers who use the remote option must provide written documentation of their remote onboarding and telework policy for each employee. The burden is on the employer to document that the remote option was necessary.
- Employees will have a choice as to documentation presented under List A, B, and C for the in-person re-verification. It does not need to be the same documentation that was provided virtually.
- Employees with documentation that expires prior to the physical re-examination will need to provide unexpired documentation that would be re-verified in Section 3.

Jackson Lewis attorneys are available to assist you in implementing new strategies and policies regarding I-9 compliance and dealing with other evolving immigration concerns. Please contact a Jackson Lewis attorney or the dedicated [COVID-19 Task Force](#) with any questions.

©2020 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.