

DHS announces flexibility in requirements related to Form I-9 compliance

U.S. Immigration and Customs Enforcement (ICE) today announced an extension of the flexibilities in rules related to Form I-9 compliance that was granted earlier this year. On March 19, 2020, due to precautions implemented by employers and employees associated with COVID-19, the Department of Homeland Security (DHS) announced that it would exercise prosecutorial discretion to defer the physical presence requirements associated with the Employment Eligibility Verification (Form I-9) under section 274A of the Immigration and Nationality Act.

After any employee who was onboarded using the deferred physical inspection procedure outlined above returns to the workplace, the employer should instruct the employee to bring in the Section 2 documents that they presented during the remote inspection. Within three business days of that employee physically returning to the workplace, the employer must physically examine the employment authorization documents and verify that the documents appear to be genuine and relate to the employee presenting them. The employer must then update Section 2 of the employee's I-9 by adding "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. ICE will not require employers to mandate newly hired employees to report to work in advance of any phased reopening procedure established by the company or state and local authorities merely for the purpose of verification of their documents.

[View the original guidance, including eligibility requirements →](#)

Going forward DHS will continue to monitor the ongoing national emergency and provide updated guidance as needed. Employers are required to monitor the DHS and ICE websites for additional updates.

Frequently Asked Questions

What if the Employment Authorization (EA) documents used during the remote hire have expired or are lost?

- 1) If the employee is presenting the same EA documents and they were valid at the time of hire, no additional documentation other than the updating of the "additional comments" field is required.
- 2) If the documents are lost or unavailable, have the employee fill out a new Form I-9 and present any combination of a valid List A or List B and C documents. Complete the Form I-9 as usual and use the same hire date as the remote hire, attach this Form I-9 to the remote hire Form I-9 with a note indicating that the original documents were unavailable.

What if the person who examined the EA documents is not available to conduct the physical inspection?

Have the employer representative who is conducting the physical inspection complete a new second page (Section 2) of the Form I-9 and attach that to the (complete) remote inspection Form I-9.

Any government audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees only.

If an employee is currently 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.

Additionally, employers may designate an authorized representative to act on their behalf to complete Section 2. An authorized representative can be any person the employer designates to complete and sign Form I-9 on their behalf. 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.