

Immigration Alert: DHS Suspends In-Person Inspection Requirement for Form I-9 and Extends Response Time for Notices of Inspection

March 27, 2020

Update: On January 27, 2021, DHS extended the suspension for the eighth time, until March 31, 2021. Note that the deadline for Notices of Inspection received in the month of March 2020 was July 19, 2020 - no additional extension has been granted to those. Employers should monitor the DHS and ICE websites for additional updates.

The U.S. Department of Homeland Security (DHS) announced on Friday, March 20 that it has suspended the in-person inspection requirement for Form I-9 documents for employers who are operating entirely remotely due to the coronavirus pandemic. Employers normally must conduct in-person inspections of a new hire's supporting Form I-9 documents proving the employee's identity and work authorization. The suspension is effective until May 19 or the third business day following the end of the National Emergency that has been declared for the pandemic, whichever comes first. During this period, qualifying employers who wish to take advantage of this flexibility should do the following:

- Keep a memorandum with i) names of affected new hires and employees with reverifications, and ii) copies of the employer's telecommute and remote onboarding policies, for possible inspection;
- Obtain I-9 documents remotely (via video link, fax, e-mail, etc.), inspect and retain copies of the documents, and complete Section 2 of Form I-9 within the required three business days of the first day of employment;
- In the case of reverifications, obtain I-9 documents remotely, inspect and retain copies of the documents, and complete Section 3 of Form I-9 by the expiration date of the current work authorization as required;
- Within three business days of resuming normal operations, have affected employees present I-9 documents for in person verification of their employment authorization, and identity in the case of new hires;
- Enter "COVID-19" in the additional information field of Section 2 of Form I-9, as the reason for the physical inspection delay; and
- Add "documents physically examined" and the date of physical inspection to the additional information field of Section 2 or Section 3 of Form I-9, as appropriate.



The DHS suspension does not apply to employers who have employees physically present at a work location. Employers who do not qualify for the suspension have the option to designate agents to complete the in-person Form I-9 inspection on their behalf. Employers should remember that they remain liable for any violations in the completion of the Form I-9 and verification process if using an agent.

DHS has also indicated that if new hires or existing employees are subject to quarantine or lockdown protocols because of the pandemic, it will evaluate those situations on a case-by-case basis. Employers should document such situations for possible audit.

DHS also announced that employers who were issued Notices of Inspection of their Forms I-9 and related documents in the month of March 2020 and have not yet responded will be granted a 60-day automatic extension. The agency will determine if further extension will be needed.

If you have questions, please contact Gizie Hirsh at Lathrop GPM.