



## Coronavirus: Temporary Relaxation of Physical Presence Requirement for Completion of Form I-9 for New Hires Working Remotely

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Under federal law, employers and new hires must complete the *Form I-9 Employment Eligibility Verification* process to ensure that all employees employed in the United States are lawfully authorized for employment. This requires the employee to complete Section 1 of the Form I-9 on or before the first date of employment. In turn, within three business days after the initiation of employment, the employer must complete Section 2 of the Form I-9 after physically reviewing the document or documents presented by the new employee that demonstrate his or her identity and employment authorization. For example, the employee could present either (i) one unexpired List A document such as a U.S. passport which demonstrates both identity and work authorization, or (ii) a combination of one unexpired document from List B which establishes identity such as an unexpired driver's license and one document from List C which demonstrates work authorization such as an unrestricted social security card. As a reminder, employers should not mandate which documents an employee presents so long as the documents are unexpired and appear on the *List of Acceptable Documents* attached to the Form I-9. The most current version of the Form I-9, instructions for completing the Form I-9, and the *List of Acceptable Documents* can be found [here](#).

The I-9 process normally requires that the company representative completing Section 2 of the Form I-9 be physically present with the new employee who is presenting his or her original identity and work authorization documents. This allows the company representative to make an informed determination as to whether the documents being presented (i) appear to be genuine, and (ii) reasonably appear to relate to the individual presenting them. That is, in order to make this determination, the employer representative must physically touch and examine the documents presented by the employee before completing Section 2.

However, the country's efforts to curb the spread of COVID-19 through social distancing makes this requirement impracticable, if not outright dangerous. Indeed, many employers have transitioned completely to telework arrangements which further makes it difficult, if not impossible, for the new hire and the company representative to be present at the same location in order to complete the Form I-9 process within the federally mandated three-day requirement. Businesses that are still operating who need to hire new employees during these unprecedented times need the ability to onboard new employees safely without having to worry about violating federal law related to the proper completion of the Form I-9.

To address this quandary, the Department of Homeland Security announced on Friday, March 20th that it would “exercise discretion to defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9) under Section 274A of the Immigration and Nationality Act (INA).” The official release can be found [here](#). Key points of the release are as follows:

- Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee’s identity and employment authorization documents in the employee’s physical presence.
- Employers must still inspect the employee’s Section 2 documents remotely through video link, fax, or email, etc. and obtain, inspect, and retain copies of the documents. The review of the remotely received documents must occur within three business days of the employee starting work. Based on the review of the documents, Employers should complete Section 2.
- Employers should enter “COVID-19” as the reason for the physical inspection delay in the Additional Information field in Section 2.
- Once normal operations resume (hopefully sooner rather than later), all employees who were onboarded using remote verification must physically report to their employer (or an employer representative) within three business days for in-person verification of identity and employment eligibility documentation. Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection in the Section 2 Additional Information field on the Form I-9, or to section 3 as appropriate.
- Employers who utilize this remote I-9 option must provide written documentation of their remote onboarding and teleworking policy for each new employee. We recommend that such documentation be attached to the Form I-9 and stored with the Form I-9.

This policy only applies to employers and workplaces that are operating remotely. This temporary policy may be used by employers for a period of 60 days starting March 20, 2020, or within 3 business days after the termination of the National Emergency, whichever comes first. It is possible that this policy may be extended; however, let’s hope that an extension is not required.

Should you have any questions about the I-9 process or any other employment matter, including COVID-19 issues, please feel free to contact any member of the Williams Mullen Labor, Employment & Immigration team.

Stay safe!

[Please click here for additional legal updates from Williams Mullen regarding COVID-19.](#)

*Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.*

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