

## **FORM I-9 UPDATES**

*Department of Homeland Security (DHS) announced flexibility in requirements related to Section 2 document review for Form I-9 compliance*

Due to precautions implemented by employers and employees related to physical proximity as associated with COVID-19, DHS announced on March 20 that it will 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). 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. However, employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email) and obtain, inspect and retain copies of the documents within three business days in order to satisfactorily complete Section 2.

Once normal operations resume, all employees who were onboarded using remote verification must report to their employer within three (3) business days for in-person verification of identity and employment eligibility documentation for Form I-9. Employers should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 "Additional Information" field once physical inspection occurs. Once the documents have been physically inspected, the employer should add "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.

These provisions may be implemented by employers for a period of 60 days from the date of this notice or within three (3) business days after the termination of the National Emergency, whichever comes first. Employers who elect this option must provide written documentation of their remote onboarding and telework policies for each employee.

This provision only applies to employers and workplaces that are operating remotely. 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.

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

Additionally, effective March 19, 2020, any employers who were served Notice of Inspection (NOI) by DHS during the month of March 2020 and have not already responded, will be granted an automatic extension for 60 days from the effective date. At the end of the 60-day extension period, DHS will determine if an additional extension is warranted.

### **E-VERIFY UPDATES**

#### *E-Verify extends timeframe for taking action to resolve Tentative Nonconfirmations*

On March 20, E-Verify extended the timeframe to take action to resolve Social Security Administration (SSA) Tentative Nonconfirmations (TNCs) due to SSA office closures to the public. E-Verify is also extending the timeframe to take action to resolve DHS TNCs in limited circumstances when an employee cannot resolve a TNC due to public or private office closures.

**Important:** Employers must notify employees about their TNC result as soon as possible. After an employee is notified of their TNC and decides whether to take action to resolve the TNC, the employee should acknowledge the decision on the Further Action Notice. The employer should also notify E-Verify of the employee's decision. Employees who choose to take action to resolve a TNC are referred to SSA and/or DHS.

The following new temporary policies have been implemented to minimize the burden on both employers and employees:

- Employers are still required to create cases for their new hires within three business days from the date of hire.
- Employers must use the hire date from the employee's Form I-9 when creating the E-Verify case. If case creation is delayed due to COVID-19 precautions, select "Other" from the drop-down list and enter "COVID-19" as the specific reason.
- Employers may not take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status.

We will continue to update you regarding these matters. Please contact customer service or your account management team with any specific questions or concerns.