

## New Version of Form I-9 Effective May 1, 2020

As reported back in January, in the days prior to the numerous policy changes in both immigration and employment law, U.S. Citizenship and Immigration Services (USCIS) introduced a new version of Form I-9, Employment Eligibility Verification, for all new hires. This new form goes into effect on **May 1, 2020**. Therefore, as of Friday, the prior version of Form I-9 will no longer be valid for use and will become obsolete.

Furthermore, as of May 1, 2020, employers who fail to use the new Form I-9 (Rev. 10/21/2019) will be in violation under section 274A of the INA, as enforced by U.S. Immigration and Customs Enforcement (ICE) and may be subject to financial liabilities in the event of an audit.

Additionally, on April 27, 2020, the USCIS released a new “Handbook for Employers — Guidance for Completing Form I-9” (commonly referred to as M-274). The M-274 Handbook for Employers is the USCIS’s guidance on how to complete and retain the I-9 form. A new M-274 handbook was necessary due to the introduction of the new I-9 form. This version addresses policy and regulatory changes since 2017.

As an important reminder, DHS has currently relaxed the physical presence requirements for completing Form I-9 (and E-Verify) only for employers that are operating remotely due to COVID-19 precautions. Employers operating completely remotely will not be required to review the employee’s identity and employment authorization documents through in-person verification. DHS will allow the review of Section 2 documents to be conducted remotely (either over video, fax, email, etc.). After remotely reviewing the employee’s I-9 documents, the employer will complete section 2 of the I-9 and enter “COVID-19” in the Additional Information field as the reason for the physical inspection.

However, if employees continue to be physically present at the worksite location, there will be no exceptions for in-person verification of identity and employment authorization documents. Employers will need to provide written documentation of their remote onboarding and telework policy for each employee.

Once normal business operations resume, employers must make a physical inspection of the employee’s I-9 documents within three business days of resuming normal business operations. During the physical inspection, employers 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.

The remote process may be implemented by employers for a period through May 19, 2020, at a minimum (and may be extended), or within three business days after the termination of the National Emergency, whichever comes first.

The new form is available on the USCIS website and on electronic Form I-9 software programs. The new form has some minor changes to options in sections 1 and 2, and USCIS also updated some minor details in the form instructions.

As a reminder, employers do not need to complete the new form version for current employees with a properly completed form already on file, but should use the new form for any I-9 requiring reverification. The new form can be found here: <https://www.uscis.gov/i-9>



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