

Temporary Authorization to Complete Form I-9s Remotely During the COVID-19 Pandemic Extended

Back in March 2020, the Department of Homeland Security (DHS) announced a new temporary process to allow some employers to temporarily complete the Form I-9 process remotely for new hires during the COVID-19 pandemic. This Temporary Authorization lets employers complete Section 2 of Form I-9 by remotely reviewing the new hire's identity and employment eligibility documents. DHS originally extended this Temporary Authorization until May 2020; however, because of the ongoing COVID-19 crisis, DHS has continued to extend the Temporary Authorization in increments. Currently, DHS has authorized these new procedures [through March 31, 2021](#), or until three business days after the National Emergency, whichever comes first.

What do the new authorizations allow?

Prior to this Temporary Authorization, employers were required to physically inspect in-person the documents presented by an employee for Form I-9 purposes. However, under the Temporary Authorization, employers may complete Section 2 of Form I-9 without physically inspecting (e.g., they may now remotely inspect) an employee's identity and employment authorization documents under the Temporary Authorization process. Under this temporary process employers must (1) create and retain a written policy about remote onboarding and teleworking; (2) keep copies of documents presented, while maintaining data security and privacy standards; (3) add "COVID-19" to the "Addition Information" field/box on Section 2 of Form I-9; (4) "perfect" Form I-9 within three business days of the end of the temporary remote work, meaning that an in-person meeting where employers physically verify the documents must occur; and (5) add "documents physically examined" date, and initial the "Additional Information" field/box of Section 2 or Section 3 of Form I-9 as appropriate when the documents are physically examined. Further, employers should diligently create and document any deviation from its normal Form I-9 creation and retention practices when completing a Form I-9 pursuant to the Temporary Authorization.

Employers are only eligible to use this process if it is operating remotely. This means if any employees are physically present at a work location then the employer must follow one of the standard processes of verifying, in-person, the

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employee's identity and employment eligibility to complete Section 2 of Form I-9. Employers must therefore keep in mind that during any future audit of its Form I-9s, DHS may scrutinize whether the employer was actually subject to any state or local COVID-19 quarantine or lockdown order(s), the employer's business operations during such times, and other related factors to determine whether it was truly eligible to utilize the Temporary Authorization rules with regard to any Form I-9s completed. Employers should make sure to document, as a part of their Form I-9 compliance files, the extent and duration that their workforce worked remotely, the existence of any state, local or internally imposed remote work orders or policies, the employer's efforts to comply with the Temporary Authorization requirements, the employer's efforts to perfect its Form I-9s initially completed pursuant to the Temporary Authorization once employees return to in-person employment, and any other basis the employer believes supports its good faith utilization of the Temporary Authorization exception to in-person Form I-9 completion.

DHS has also provided [guidance](#) on the use of documents to prove identity (known as [List B](#) documents). Generally, employees must verify their identity by presenting a valid List B document when completing Form I-9. However, List B documents expiring on March 1, 2020, or after, may be treated as if the employee presented a valid receipt for acceptable List B documents. If an employer is in this situation, it should enter the word "COVID-19" in the "Additional Information" field/box and record the document information where applicable. Employers have 90 days after DHS terminates this temporary policy for employees to present a valid, unexpired List B document to replace the expired document. Employees are not required to provide the same, or the same type, List B document to the employer, and may present any current List B document of their choice.

Other Remote Hiring Options

If employers are ineligible for the new Temporary Authorization process, they can still use the "remote hire" process, and may find it particularly helpful when onboarding remote hires. Under this process, a third party is physically present with the employee and the employer designates the third party as its agent. The agent can then complete and sign Section 2 of Form I-9 on behalf of the employer. An employee's family member is eligible to serve as the employer's authorized representative.

Employers should be cautious when considering use of the remote hiring process as it does not absolve them of liability under the Form I-9 regulations. Employers



are still liable for all errors committed on Form I-9, even if committed by the employer's agent. A best practice is to give instructions to the agent or a real-time call with the authorized representative to walk the agent through the process. In all cases of remote hires, employers should review the completed I-9 as soon as possible and correct any mistakes immediately.

What should employers takeaway?

Employers should know the different options available to them to complete the Form I-9 during the COVID-19 pandemic and whether they are eligible to use a certain process. Employers should also carefully document their eligibility to utilize the Temporary Authorization should they choose to take advantage of it. Employers must also know of the physical inspection requirements when beginning the return to work process. Finally, employers should be aware that Form I-9 processes are dynamic and should remain vigilant about changes.

In addition, employers should be aware that [DHS has revised the Form I-9](#) and should ensure they are using the most recent Form (Revision Date 10/21/2019). The version date is located in the lower left corner of the form.

For further questions or guidance about, please contact [Ben Kurten](#) or your Reinhart attorney.

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