

Labor & Employment Alert

Form I-9 and COVID-19

Immigration and Customs Enforcement (“ICE”) recently issued [Guidance](#) regarding the completion of the Form I-9 in the context of COVID-19. In the Guidance, ICE announced that it is suspending the requirement that certain employers physically must inspect the documents that employees provide them to verify their identity and work authorization. Instead of inspecting these documents in person, employers (1) remotely must inspect the documents for Section 2 at the time of completion of the Form I-9 through other appropriate means (e.g., e-mail, fax, webcam, etc.) and (2) must obtain and must keep copies of those documents within 3 business days. They may do so until June 19, 2020. Once employers resume normal operations, they must ask all employees who provided the documents remotely to bring them to the worksite for an in-person verification within 3 business days. At that time, employers also must note that the reason for delaying the physical inspection of the document was “COVID-19” in the “Additional Information” field in Section 2. Once employers physically inspect the documents, they should add “documents physically examined” with the date of inspection either to the “Additional Information” field in Section 2 or Section 3.

If employers want to take advantage of this option, they (1) need to notify employees that this is the manner in which they remotely will verify their documents and (2) they must provide them with their remote onboarding and telework policy. The language in the Guidance seems to suggest that this means any worksite, not necessarily where the on-boarded employee will work. However, there is a carve-out for employees who are subject to a quarantine or isolation order. ICE stated it would review such instances on a case-by-case basis, but did not elaborate on the mechanics of how it will do so.

Under the Guidance, employers also have the option of designating an agent to complete the Form I-9 as part of the onboarding process. Employers should still proceed with caution because they would be liable for any mistakes that the agent makes.

United States Citizenship and Immigration Services also recently issued [Guidance](#) regarding List B documents. After May 1, 2020, identity documents found in List B, which were set to expire on or after March 1, 2020, and were not otherwise extended by the issuing authority, may be treated as if an employee presented an acceptable. When employees provide employers with an acceptable expired List B document that has not been extended by the issuing authority, employers should:

- Record the document information in Section 2 under List B, as applicable; and,
- Enter the word “COVID-19” in the Additional Information Field.