

> Client Alert

Employers May Only Use the New Edition of the Form I-9 Going Forward

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As of May 1, 2020, the U.S. Department of Homeland Security (DHS) will only allow employers to use the [“10/21/19 edition” of the Form I-9](#) to verify the identity and work authorization of individuals hired for employment in the United States. Employers were previously permitted to use either the 07/17/17 N or the 10/21/19 edition of the form from the time the latter version was released by the DHS last fall and as of today, the earlier version may no longer be used.

All employers are responsible for ensuring a Form I-9 is properly completed for each individual they hire in the United States, both citizens and non-citizens, and appropriately maintained in the workplace. On the form, an employee must attest to his or her employment authorization legally to work in the United States. The employee must also present the employer with certain documentation evidencing their identity and supporting their employment authorization. The employer must then examine the employment eligibility and identity document(s) that an employee presents to determine the authenticity of the documents and to record the supporting document information on the Form I-9. The latest edition of the form, [among other things, clarifies what documents are acceptable for the purposes of establishing an employee's identity](#), including but not limited to, a U.S. Passport, a driver's license or ID card issued by a State, or an ID card issued by federal, state or local government agencies or entities, provided each contains a photograph or information such as name, date of birth, gender, height, eye color and address.

While the Form I-9 Instructions require that the employer review the documents in the physical presence of the employee, this requirement has been modified in the wake of COVID-19. Specifically, the [DHS announced on March 20, 2020](#) that “[e]mployers 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,” and further stated that:

- Employers must instead inspect the documents remotely, “over video link, fax or email, etc.” and obtain, inspect, and retain copies of the documents, within three (3) business days in order to complete the form.
- Employers who avail themselves of this option **must perform an actual physical inspection of the documents once normal business operations resume**. Specifically, 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. Upon verification, the employer should enter “COVID-19” as the reason for the physical inspection delay in the “Additional Information” field on Section 2 of the form. The employer should also add “documents physically examined” with the date of inspection to the “Additional Information” field on Section 2 of the form, or to Section 3 as appropriate.

- Employers are solely responsible for maintaining written documentation of their remote onboarding and teleworking policy for each employee.

Notably, the exception to the physical presence requirement only applies to those employers and workplaces that are operating remotely. An employer may not avail itself of this exception if its employees are physically present at its work location. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, the DHS will evaluate such situations on a case-by-case basis. An employer may also designate an authorized representative to complete Section 2 of the form on its behalf. The new edition of the form clarifies who may serve as the employer’s authorized representative. Regardless of who completes the form, however, the employer remains liable for any violations in connection with it or the verification process in general.