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Question of the Day: Form I-9 Physical Presence Requirements

Legal Update

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Question

Since states are permitting workplaces to reopen, must employers begin physically inspecting all I-9 documents?

Answer**No.**

As previously reported on Fredrikson's USCIS COVID-19 Updates and in our May 5 Employment Question of the Day, on March 20, USCIS announced the temporary deferral of the normal physical presence requirements affiliated with form I-9 for workplaces operating remotely through May 19, 2020.

On May 14, however, U.S. Immigration and Customs Enforcement (ICE) announced an extension of the flexibilities related to Form I-9 compliance for an additional 30 days due to continued precaution related to COVID-19. As a reminder, the requirements are temporarily relaxed as follows for workplaces that continue to operate remotely:

- 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.
- Employers must inspect the Section 2 documents remotely (e.g., video link, fax or email, etc.) and obtain, inspect and retain copies of the documents, within three business days for purposes of completing Section 2.
- Employers also should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field once physical inspection takes place after normal operations resume.
- Once normal operations resume, all employees who were onboarded using remote verification must report to their employer within three business days for in-person verification of identity and employment eligibility documentation for

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Form I-9, Employment Eligibility Verification.

- 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.
- Employers who avail themselves of this option must provide written documentation of their remote onboarding and telework policy for each employee.
- If there are employees physically present at a work location, no exceptions were implemented for in-person verification of identity and employment eligibility documentation for Form I-9. 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.

If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor or Immigration Attorney.

[View All: COVID-19 Employment Question of the Day](#)