

# Remote I-9 Submission: An Update on DHS's Pandemic Policies

The COVID-19 pandemic brought many changes to how applicants are hired and work. We saw a huge uptick in the number of employees and new hires who worked fully from home instead of in an office. Remote work became the standard for all who could. The goal was to continue operations while the coronavirus raged and governments ordered business shutdowns to curb infections.

For those employers hiring new employees, this meant that completing typical onboarding tasks moved online away from the worksite. There was one major sticking point — the I-9 verification process that requires employers to review documents showing that a newly hired worker was legally authorized to work in the United States. That process requires a physical examination of documents such as birth certificates, passports, or work visas shortly after the start date. Plus, the documents had to be current and not expired. But with workplaces closed and remote hires chosen to telework exclusively — sometimes hundreds of miles away — actual physical inspection of original documents became an insurmountable task. Plus, the agencies responsible for issuing or renewing acceptable documents were also shut down or working remotely, thus renewing acceptable documents became a huge problem for applicants.

Enter the Department of Homeland Security (DHS) — the federal agency responsible for enforcing immigration laws. On March 20, 2020, DHS announced flexibility in the physical presence requirements for Form I-9 compliance for employers and workplaces that are operating remotely during the COVID-19 outbreak. The changes essentially created a temporary remote I-9 process.

By May 2020, DHS's U.S. Citizenship and Immigration Services (USCIS) realized that employees were having trouble renewing documents that would allow them to prove legal authorization to work. DHS then announced that employers could accept expired documents for both virtual and in-person document inspection to complete the form. Here's how the process worked:

- Employers with employees working remotely due to COVID-19 were not required to review the employee's identity and employment authorization documents in the employee's physical presence. Doing so, obviously, would risk spreading the virus and was often not possible because state and local governments had ordered shut-downs that banned non-essential workers from entering workplaces.
- Employers did — however — still have to complete Form I-9. DHS allowed them to do so remotely using a video link, fax, or email to obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2 of the I-9 form. Employers then had to enter "COVID-19" as the explanation for why the documents had not been examined in the employee's physical presence.
- Finally, DHS required that all employers who wanted to remotely examine I-9 documents also provide employees with a copy of their telework policies and virtual onboarding process.
- Employers could accept expired documents either for in-person inspections in the case of essential workers who still had to report in person for onboarding or remote employees whose onboarding was virtual.

## Post-Pandemic rules

DHS has now changed the I-9 process for all employers whether they employ, interview, or onboard employees remotely or in person.

### Here are the most significant changes:

- Previous DHS rules that allowed the use of expired documents to satisfy I-9 identity and work authorization requirements will not be allowed to continue doing so. Beginning May 1, 2022 only current documents can be used. This is because almost all agencies responsible for issuing such documents have resumed normal operations.
- If an employee presented an expired document between May 1, 2020, and April 30, 2022, employers must update Form I-9 by July 31, 2022, and inspect the current document or another current document from the same list. This reverification only applies if the employer still employs the worker.
- For now, DHS has not rescinded the option of remotely reviewing documents for those who do not report to a physical office. The current guidelines are set to expire on April 30, 2022. Stay alert to any changes in the next few weeks. Employers should assume that unless DHS announces otherwise, they will have to begin live in-person onboarding as of May 1, 2022. You can stay up-to-date at the [ICE I-9 webpage](#).
- Employers should remember that the remote inspection rules apply exclusively to remote workers. If you have begun calling back workers, you must also review their documents in person. Your return to the office process should automatically include that I-9 review.

What follows is a brief review of the I-9 process as it existed before the pandemic.

## Standard I-9 employment requirements: I-9 Documents

DHS's Immigration and Customs Enforcement (ICE) is the agency responsible for assuring that employers only hire and employ individuals who are legally authorized to work in the United States. Included on that list are all U.S. citizens by either birth or naturalization as well as others who have been approved for various work and immigration visas. The ICE-issued Form I-9 is the principal method used to verify work authorization.

Employers must complete and sign Section 2 of Form I-9, Employment Eligibility Verification, within 3 business days of the date of hire of their employee. The hire date is the first day of work for pay. For example, if your employee began work for pay on Monday, you or your authorized representative, if you outsource the process, must complete and sign Section 2 by Thursday of that week. Most employers use their human resources office and an HR manager to complete the process. The new employee also signs the employee's form.

I-9 forms are not filed with the federal government. Nor do employers need to retain the original documents. However, employers must produce them along with I-9 employment eligibility documents should immigration officials request physical inspection. Employers must retain either a paper or electronic copy of the form for at least three years. In cases where employees work for the company for longer than two years, the employer must keep the I-9 on file for a full year after the employee's tenure ended.

The I-9 forms contain three lists of documents referred to as List A, List B, and List C. To establish worker eligibility, employees must present either one document from the list of acceptable documents.

### **List A - Documents that Establish Both Identity and Employment Authorization**

1. U.S. Passport or U.S. Passport Card
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)
3. Foreign Passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa.

4. Employment Authorization Document that contains a photograph (Form I-766)
5. For a nonimmigrant alien authorized to work for a specific employer because of his or her status:
  1. Foreign passport; and
  2. Form I-94 or Form I-94 A that has the following:
    1. The same name as the passport; and
    2. An endorsement of the alien's nonimmigrant status as long as that period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form.
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI

**List B - Documents that Establish Identity**

1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address.
2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address.
3. School ID card with photograph
4. Voter's registration card
5. U.S. Military card or draft record
6. Military dependent's ID card
7. U.S. Coast Guard Merchant Mariner Card
8. Native American tribal document
9. Driver's license issued by a Canadian government authority

**For persons under age 18 who are unable to present a document listed above:**

1. School record or report card
2. Clinic, doctor, or hospital record
3. Day-care or nursery school record

**List C- Documents that Establish Employment Authorization**

1. A Social Security Account Number card, unless the card includes one of the following restrictions:
  1. NOT VALID FOR EMPLOYMENT
  2. VALID FOR WORK ONLY WITH INS AUTHORIZATION
  3. VALID FOR WORK ONLY WITH DHS AUTHORIZATION
2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS 545, FS-240) .
3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal.
4. Native American tribal document.
5. U.S. Citizen ID Card (Form I-197).
6. Identification Card for Use of Resident Citizen in the United States (Form-I-179).
7. Employment authorization document issued by the Department of Homeland Security (DHS).

**E-Verify**

A key component of I-9 compliance is the E-Verify system. Currently, federal law requires only the federal government and employers with federal contracts worth more than \$100,000 to use E-Verify to check the work eligibility status of newly hired employees, as well as current employees who work directly on a contract. The requirement applies to federal contracts and subcontracts let on or after Sept. 8, 2009. Also, at least twenty

states (Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and West Virginia) require some employers to use the system.