



GMS Flash Alert

Immigration Edition

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United States - Managing Employer I-9 Requirements and COVID-19

In response to growing concerns brought on by the COVID-19 pandemic, and in some cases mandated by local governments, U.S. employers have rapidly shifted toward more flexible work arrangements to protect the health and safety of its workforce.

For many employers, the directive to observe social distancing means having their employees work remotely from home. However, not all employment-related functions can be completed virtually, namely, U.S. employers are still required to comply with in-person documentation verification requirements as part of the Form I-9, *Employment Eligibility Verification* process. Employers may need to swiftly incorporate new processes and the use of designated representatives in their employment authorization verification procedures to help ensure continued compliance with I-9 federal requirements.

WHY THIS MATTERS

U.S. employers must complete Form I-9 requirements to verify the identity and employment authorization of its U.S. workforce including both U.S. citizen and non-citizen workers. Failure to properly comply with Form I-9 requirements can result in monetary fines imposed on the employer, disbarment from government contracts, and, in certain situations, criminal penalties.

As of March 18, 2020, the current policy remains in effect, the Department of Homeland Security (DHS) has not issued any updated guidance to delay or exempt employers from the in-person document verification requirement.

Under the current circumstances created by the COVID-19 pandemic and until further guidance is published by the U.S. government, employers in the U.S. will need to incorporate creative measures to ensure continued compliance with the in-person document inspection requirements, even where business operations have shifted entirely to a remote work arrangement.

Background on I-9 Employer Requirements

To comply with the I-9 requirements set forth by the DHS, all U.S. employers must complete a Form I-9 to document and verify the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, and to confirm the individual has valid employment authorization to work in the United States. Employers are also responsible for updating existing employees Forms I-9 if their documents are about to expire.

Several sections of the Form I-9 require that the employee present their identity and employment authorization documents to the employer for physical inspection. The employer or authorized representative is responsible for reviewing the documentation to determine that the items reasonably appear on their face to be genuine and to relate to the person presenting them. The I-9 instructions further provide that the employer or authorized representative must physically examine the documents in the employee's physical presence.

Given the in-person inspection requirements, employers may not rely on the use of virtual meetings, tele-conferencing technologies, or faxed or scanned copies, to verify the authenticity of employee's documents and complete the Form I-9. **Thus, to comply with the I-9 requirement of physical inspection, employers should use authorized representatives to facilitate the need for physical inspection.**

Use of Authorized Representatives

As previously reported, the DHS recently released a new edition of the Form I-9 (Rev. 10/21/2019).¹ (For prior coverage, see GMS [Flash Alert 2020-023](#), 4 February 2020.) Starting May 1, 2020, employers can only use the new edition of the Form I-9 as prior versions will be obsolete. The instructions to the new Form I-9 confirm that the employer's authorized representative may be "any person" that the employer designates to complete and sign the Form I-9 on the employer's behalf. In other words, an employer is permitted to designate any third party, including the employee's family or household members, as an authorized representative to carry out the physical inspection requirements of an employee's documents to complete Form I-9. While employers have until May 1, 2020 to incorporate the new Form I-9 (Rev. 10/21/2019), **given the remote working conditions caused by the COVID-19 pandemic, it would be advisable for employers to immediately use the new version of Form I-9 in order to leverage their expanded options for authorized representatives.**

Regardless of who is designated to complete and sign the Form I-9, **the employer continues to remain ultimately liable for any violations** relating to the form's completeness and document verification process, even if the violations were committed by the designated person acting on the employer's behalf.²

Next Steps for Employers to Consider

For this reason, it is advised that employers instill a secondary review process and electronically store and review all Forms I-9 prepared by designated persons to ensure completeness and accuracy as soon as the Form I-9 is complete. Providing each designated representative with an explanation of the obligations relating to I-9 verification, as well as the importance of completing the process properly and timely, is also recommended.

KPMG NOTE

Traditionally, U.S. employers would carefully vet third parties prior to designating an authorized representative to assist with Form I-9 requirements. With the COVID-19 pandemic rapidly changing even routine business operations, U.S. employers must devise strategies to remain I-9 compliant without heavily disrupting business operations and without jeopardizing the health and safety of their workforce.

FOOTNOTES:

- 1 See the new Form I-9 on the USCIS [website](#).
- 2 For more information on the current civil fine amounts [click here](#).

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Contact us

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