

# Alternative Form I-9 Compliance Available During COVID-19 Crisis

PUBLISHED ON

**March 26, 2020**

---

While the COVID-19 pandemic is crushing most businesses, certain "life-sustaining businesses" and employers are ramping up production and forced to hire extra help.

But with those hires come stringent federal regulations, especially Form I-9 compliance. The government recently made that step easier with a process to remotely approve the Form I-9 instead of the normally required in-person approval.

Last week the U.S. Department of Homeland Security, the federal agency charged with enforcing Form I-9 compliance, announced relaxed rules regarding Form I-9 that will be in place during the pandemic. The Immigration and Nationality Act requires that employers must verify new hires' identification and authorization to work in the U.S. by completing Form I-9 within three business days of hire. That requires physical in-person inspection of identification documents presented by new hires.

Specifically, employers taking physical proximity precautions due to COVID-19 will not be required to review a new hire's identity and employment authorization documents in the employee's physical presence. Instead, those employers may inspect the required documents remotely, for example over video link, fax, or email. This virtual inspection must take place no later than three days from the date of hire, and employers must retain copies of the documents provided virtually. The employer also must complete the physical inspection once normal operations resume. At that point, the employer should fill in Section 2 of Form I-9 and enter "COVID-19" in the "Additional Information Field" as the reason for the delayed physical inspection of required documents.

**This relaxed enforcement only applies to employers and workplaces that are operating remotely.** If employees are physically present at a work location, in-person inspection still must occur within three business days of hire. That said, the department will evaluate compliance efforts by employers operating physical locations "on a case-by-case basis," taking into account whether the employer's ability to comply with the in-person inspection requirement has been hampered by quarantine or lockdown protocols. Employers also may designate an authorized representative to act on their behalf to complete Section 2, although the employer is liable for any violations the agent commits during the verification process.

Finally, employers who received a Form I-9 notice of inspection from the department during March 2020 have been granted an automatic extension of 60 days to comply. At the end of that period, the department will determine if additional extension would be warranted.

The rules and regulations of Form I-9 compliance and other immigration policies could be changing quickly during the next few weeks and months. If you have any questions on how your business will be affected, please [contact me](#) or

anyone in the [Barley Snyder Immigration Practice Group](#).

**DISCLAIMER:** As we face an unprecedented time of legal and business uncertainty, we are working to provide updates on the status of important legal news related to COVID-19. It is important to note that the situation is changing rapidly and the information provided in our alerts is not intended to create an attorney-client relationship. The information contained in our alerts is for general informational purposes only and should not be construed as legal advice or a substitute for legal counsel. If you have questions about your legal situation or about how to apply information contained in this alert to your situation or about how any other information found on our website may affect your business, you should reach out to one of our attorneys. We assume no responsibility for the accuracy or timeliness of any information provided herein or by any linked site. As information changes rapidly, users are strongly advised to verify any information before relying upon it.

## WRITTEN BY:

---



**David J. Freedman**

Partner

Tel: (717) 399-1578

Email: [dfreedman@barley.com](mailto:dfreedman@barley.com)