BURR ALERT

DHS Relaxes Form I-9 Requirements in Light of COVID-19 Pandemic

Nina Maja Bergmar March 2020

On March 20, 2020, the DHS announced that it is temporarily relaxing some of the employer requirements for completing Employment Eligibility Verification Form I-9 ("Form I-9") as a result of the COVID-19 pandemic.

Prior to the DHS's announcement on Friday, all employers completing the Form I-9 process for new employees were required to physically examine the original work authorization and identification documents that employees presented upon hire. Additionally, the employee had to be physically present with the document examiner. Physical examination of the original documentation allows the examiner to determine if a document reasonably appears to be genuine by, for example, examining the paper quality of the document. Social Security cards, for instance, are made of thick stock paper, and thus a flimsy social security card is likely fraudulent.

The DHS's recent announcement makes clear that employers and workplaces that are operating remotely due to the COVID-19 pandemic are temporarily excused from the physical presence requirement. Rather than meet the new hire and review the documentation presented in person, employers are asked to inspect the Section 2 documents remotely (e.g., over 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 should enter "COVID-19" as the reason for the physical inspection delay in Section 2 "Additional Information" field once physical inspection takes place after normal operations resume. 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 Section 3, as appropriate. These provisions may be implemented by employers for a period of 60 days from the date of this notice or within 3 business days after the termination of the National Emergency, whichever comes first.

Notably, the new rule only applies to employers and workplaces that are operating entirely remotely due to the COVID-19. The DHS has made clear that if there are <u>any</u> employees physically present at a work location, then ***no exceptions*** are allowed from 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.

Employers who are partially shut down but still have employees at worksites (and thus not covered by the new rule) should consider designating an authorized representative to complete Section 2 on their behalf. An authorized representative can be any person the employer designates to complete and sign Form I-9 on their behalf, such as a foreman, agent, notary public, or anyone else acting on the employer's behalf. However, note that the employer is liable for any Form I-9 violations committed by the authorized representative.

Notwithstanding the increased flexibility afforded employers during this pandemic, companies should continue to closely watch their I-9 practices and be mindful of the steep fines associated with Form I-9 violations. Currently, employers can be fined between $216 and $2,126 ***per violation*** for any Form I-9 paperwork violations.

Stay up to date by monitoring the latest COVID-19 resources on our CORONAVIRUS RESOURCE CENTER.

To discuss this further, please contact:

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