

DEAR HRK

There have been so many updates to the Form I-9 during the pandemic. What should our organization be doing to keep compliant?

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Before the temporary policies were introduced due to the COVID-19 pandemic, reviewing a new hire's documentation for the purposes of completing the Form I-9 had to be done in person. Video technology was not allowed, therefore employers had to figure out a way to review documentation in person for employees who worked remotely. The U.S. Citizenship and Immigration Services (USCIS) has held that employers had to complete the I-9 using a [trusted agent or representative](#). That said, keep in mind that some states, such as California, place additional restrictions on who can complete the I-9. The best practice is for the employer to find a consistent trusted resource, commonly this has been a notary public. The challenge has been finding a notary to take on that responsibility. In fact, we often heard from clients that prospective employees were turned away because they couldn't find a notary willing to take on the accountability of completing the I-9.

With the onset of COVID, the USCIS relaxed the rules around verifying I-9 documentation beginning in March 2020. This has allowed employers much more flexibility as new hires could show their documentation over webcam, including but not limited to Zoom, Teams, etc. Keep in mind that normal timelines for I-9 completion have always remained in effect, where Section 1 needs to be completed on the employee's start date, and Section 2 within three business days of hire.

Since the beginning of the pandemic, there have been several updates issued in the form of extensions to this temporary policy. In addition, there was a recent update to I-9 compliance announcing that expired List B documents will no longer be accepted, which we addressed in this

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e-Alert. Changes continue, since as of [April 25, 2022](#), I-9 remote document inspection has been extended until October 31, 2022.

As mentioned in this **e-Alert**, once an employee returns to in-person work, the employer is responsible for physical verification. This is an important consideration, and we encourage employers to ensure they are tracking the movement of their employees. The best practice is to keep a list of employees hired since March 2020 who had I-9 documentation verified virtually. If there are plans for them to return in person, designate someone in your organization to conduct in-person verifications.

While these relaxed rules give employers additional time, it's important to consider how your organization will respond if and when the DHS extends this relaxation of rules beyond October 31, 2022.

Over the last couple of years, many businesses have changed where the work is done, by adopting a permanent remote work model. For employees who work 100% remotely, with no plans to work at a location or office, original guidance on I-9 verification should be followed, which means that examining documentation via webcam is not permissible. As such, employers should designate an authorized representative to fill out Section 2 or have the employee locate a notary public to complete the paperwork. Keep in mind that the flexibility rules apply to employees who work exclusively in a remote setting due to COVID.

Regardless of how the I-9 is completed, it must be done correctly. Form I-9 remains the most fined government form, so it's important to ensure accurate I-9 records. There are a number of cloud-based I-9 technology solutions available to assist with compliance for both in-person employees as well as those who work remotely. We are happy to talk about the support options we offer our clients. If interested in learning more email us at info@hrknowledge.com.

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