

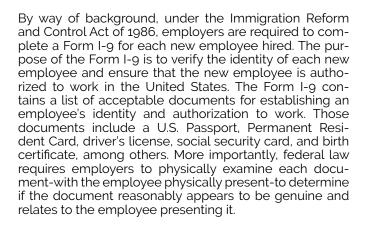
## Client Alert

Business Information for Clients and Friends of Shumaker, Loop & Kendrick, LLP

03.25.2020

## Department of Homeland Security Provides Employers with Some I-9 Flexibility

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On March 20,2020, the U.S. Department of Homeland Security ("DHS") announced a new exception for employers and workplaces that are operating completely remotely as a result of physical proximity precautions due to COVID-19. Specifically, DHS announced that it would not require employers to review the employee's identity and employment authorization documents in the employee's physical presence. Employers are still required to inspect the Section 2 documents but an employer can now do so remotely (e.g., over video link, fax, or email, etc.). Employers must also obtain, inspect, and retain copies of the documents, within 3 business days for purposes of completing Section 2. In addition, employers should designate "COVID-19" as the reason for the physical inspection delay in the 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 to section 3 as appropriate. An employer may implement these provisions for a period of 60 days from the date of DHS's notice OR within 3 business days after the termination of the National Emergency, whichever comes first.

Now, for employers who decide to avail themselves of this option, it is imperative that they maintain written documentation of the remote onboarding and telework policy for each employee. Further, once normal operations resume, all employees who were hired using remote verification, must report to their employer within three business days for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification. Once the employer physically inspects the employment





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eligibilitydocuments, the employers hould add "documents physically examined" with the date of inspection to the Section 2 additional information field on the Form I-9, or to Section 3 as appropriate.

Any audit of subsequent Forms I-9 would use the "inperson completed date" as a starting point for these employees only.

Moreover, *only* employers and workplaces that are operating *completely* remotely can make use of the physical inspection of employment eligibility documents exception. According to DHS:

If there are employees physically present at a work location, no exceptions are being implemented at this time for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification. 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. Additionally, employers may designate an authorized representative to act on their behalf to complete Section 2. An authorized representative can be any person the employer designates to complete and sign Form I-9 on their behalf. The employer is liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer's behalf.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at <a href="mailto:shumaker.com">shumaker.com</a>. We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by

<u>snumaker.com</u>



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