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DHS ANNOUNCES LIMITED I-9 COMPLIANCE FLEXIBILITY FOR EMPLOYERS WITH NO EMPLOYEES PHYSICALLY PRESENT AT A WORK LOCATION

On March 20th, the Department of Homeland Security (DHS) announced that for the **next 60 days or within three business days after** the termination of the National COVID-19 Emergency, whichever comes first, employers and workplaces that are operating remotely may "defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9)." This means that if "physical proximity precautions" are being taken due to COVID-19 and **there are no employees at all physically present** at a work location, then employers will not be required to review employee identity and employment authorization documents in person. Employers **must still inspect documents and complete Section Two of Form I-9 within three days of hire**, but may do so remotely via "video link, fax or email, etc." If employers with all employees working remotely choose to utilize the COVID-19 emergency provisions, then the instructions for I-9 completion during this time are as follows:

- During the permitted COVID-19 period, employers must provide written documentation of their remote onboarding and telework policy for each employee.

- For employees who complete the I-9 process remotely without physical inspection of documents, the employer should complete Section Two of Form I-9 by noting in the "Additional Information" form field that there was a COVID-19 physical inspection delay.
- All employees who have I-9 documents verified remotely without physical inspection must report to the employer within **three business days of normal business operations resuming** for in-person verification of identity and employment eligibility documentation, as is normally required for Form I-9.
- When the delayed in-person physical inspection occurs, the employer should add to Section Two of Form I-9 in the "Additional Information" form field OR to Section 3 if applicable, "documents physically examined on [DATE of inspection]."

DHS also specified the following related provisions:

- Any audit of subsequent Forms I-9 will use the "in-person completed date" as a starting point for impacted employees only.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

- If there is an employer with some employees physically present at a work location but newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, then DHS will evaluate the situation for I-9 compliance on a case-by-case basis.
- Employers are required to monitor the DHS and ICE websites for additional updates regarding when the extensions will be terminated, and normal operations will resume.

As a reminder, under standard I-9 compliance provisions, an employer may designate any person it chooses to serve as its authorized representative for the purposes of verifying documents in-person and completing Section Two

of Form I-9. The employer is still liable for all I-9 completion and compliance requirements.

Finally, employers should develop a plan for completing and retaining I-9 records, as well as for documenting special actions taken to address fact-specific situations during COVID-19.

Associate **Ashley Moore** contributed to this briefing.

Wiggin and Dana's Immigration and Nationality Law and Compliance Practice Group will continue to provide briefings as more information becomes available. Please contact the practice group Co-Chair, **Najia Khalid**, at 203.498.4314 or nkhalid@wiggin.com if you have any questions.