



ALERTS

COVID-19 And Immigration: Frequently Asked Questions

March 20, 2020

The COVID-19 pandemic and government response to this public health crisis are having an unprecedented impact on individuals, educational institutions, businesses and employers throughout the United States. The pandemic has also affected U.S. immigration in every imaginable way – Consular to the U.S. Citizenship and Immigration Service (USCIS) field office to Immigration Court operations.

We have prepared this FAQ to identify and address some of the most common immigration-related issues arising from COVID-19 in the workplace and at educational institutions.

Our HR staff is operating remotely. What is the impact on our E-Verify processes?

Employers participating in E-Verify must follow regulations, which mirror I-9 requirements. One of these requirement is to complete the I-9 within three business days of the new employee's start date. Employers with HR employees working remotely need to ensure that they have sufficient time and resources to securely review original documents and submit required information to E-Verify before the deadline lapses.

The biggest difference between E-Verify and non E-Verify employers is that E-Verify employers are required to view a photographic ID.

It is important for employers to be conscientious of potential data privacy risks, if such data has to be verified electronically.

Since our HR staff is operating remotely, can we complete I-9s virtually?

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On March 20, the Department of Homeland Security (DHS) published guidance providing a short-term exception to the in-person I-9 completion requirement. This narrow exception is summarized below:

- Where there is written documentation of remote employment due to COVID-19, the I-9 agent can review the supporting documents virtually over email, Skype, Zoom and the like. This need not be done in physical proximity to the new hire.
- The above step must be completed, as is usually the case, within three days of hire.
- The employer will subsequently be required to physically inspect the I-9 documents following the usual process, within 60 days from the date of this announcement or three days after the end of the declaration of a national emergency by the President, whichever comes first.
- When it physically inspects the documents, the employer must update the I-9 Section 2 Additional Information Section or Section 3, as appropriate, to include the date of physical inspection and notate as “documents physically examined.” The employer will also be required to notate Section 2 with the language “COVID-19” to explain the reason for the physical delay.
- This exception is only available if an employer is operating remotely, and exceptions are not permitted if some employees are working in the office.

Employers may wish to designate an authorized representative to complete document review and provide the appropriate signature. Employers remain liable for any errors or omissions by the agent, so employers should exercise care in selecting an agent for I-9 purposes.

We laid off several employees due to COVID-19 and subsequently rehired them. Do we need to complete new I-9s?

The I-9 requirements remain unchanged. If you rehire an employee within three years that the I-9 was previously executed, you may either rely on the previously executed I-9 or complete a new I-9.

If you chose to rely on the previously executed I-9, you should carefully review and follow the instructions on the I-9. If the employees remain employment eligible as indicated on their I-9, simply update Section 3 with the rehire date. If a particular employee’s employment eligibility has lapsed, then reverification is required.

Please note that USCIS released a new Form I-9 version (edition date 10/21/19) on January 31, 2020, and the new version must be used starting on May 1, 2020. Until then, employers may use either the current version (edition date 10/21/19) or the previous version (edition date 07/17/2017).

If you have enrolled in E-Verify since the laid-off employee was previously hired, you would need to process the employee when rehiring them through E-Verify.



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A new I-9 may not be necessary if you furlough an employee, but do not formally terminate their employment.

Is COVID-19 likely to impact ICE's I-9 audits and operations?

Immigration and Customs Enforcement (ICE) announced its intention to adjust operations in light of COVID-19 to focus on public safety and national security. ICE also announced that it will not conduct enforcement operations near healthcare institutions, absent exceptional circumstances. ICE has also announced that any Notices of Inspection (I-9 administrative subpoenas) that were due in March will be automatically extended by 60 days.

What impact has COVID-19 restrictions had on travel to and from the U.S., inspections at ports of entry and U.S. consular processing appointments worldwide?

The U.S. Department of State is now advising U.S. citizens to avoid all international travel due to the global impact of COVID-19. A [Global Health Advisory of Level 4: Do Not Travel](#) is in affect as of March 19, 2020.

President Trump has issued four proclamations regarding the novel coronavirus and COVID-19, as of this writing, each containing increasing restrictions on travel to and from designated countries/regions, as follows:

- January 31 – Barring entry to the United States of most foreign nationals who traveled to China within the past 14 days
- February 29 – Expanding restrictions to include all aliens who were physically present within the Islamic Republic of Iran during the 14-day period preceding their entry or attempted entry into the U.S.
- March 11 – Restricting travel to the U.S. for foreign nationals who have recently been in certain European countries known as the Schengen Area
- March 14 – Restricting travel to the U.S. from foreign nationals who have recently been in the United Kingdom and Ireland

Mexico will likely be added to this list by March 20, though this has not been [confirmed](#).

What do these proclamations mean for Consular Service?

The U.S. government issues nonimmigrant and immigrant visas through the Department of State embassies and consulates worldwide. On March 20, the U.S. State Department (DOS) announced that it was [suspending all routine nonimmigrant and immigrant visa appointments at Consulates worldwide](#). Only emergency visa services remain available at this time.

If foreign nationals have an urgent need to travel abroad immediately and return with a new U.S. visa, reference the preferred [U.S. consulate's guidance](#) on emergency nonimmigrant visa appointments.

How have the most recent Travel Bans been implemented?

On March 11, 2020, President Trump issued a proclamation that forbid certain individuals who traveled to the Schengen Area – which includes Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland – in the last 14 days from entering the U.S. Later, on March 14, the travel ban was expanded to include the United Kingdom and Ireland.

There are exceptions, as these travel bans do not apply to:

- U.S. citizens and Lawful Permanent Residents (LPRs)
- Spouses of U.S. citizens or LPRs
- Parents or legal guardians of U.S. citizens or LPRs, provided the child is unmarried and under the age of 21
- Siblings of U.S. citizens or LPRs, provided both are unmarried and under the age of 21
- Children who are under the legal custody of U.S. citizens or LPRs
- Other certain foreign governments and health officials

These bans are in addition to existing travel bans for Mainland China (effective Jan. 31, 2020) and Iran (effective Feb. 29, 2020). Similar exemptions as listed above are available for travelers from Mainland China and Iran.

These travel bans are ongoing as the COVID-19 impact develops, and a reassessment of all COVID-19 related travel bans will likely occur on April 11, 2020.

What happens to foreign nationals on the Visa Waiver Program (VWP) present or attempting to enter the U.S.?

The VWP is a program for designated country nationals that waives the U.S. tourist visa stamp requirement, provided those individuals obtain an advanced security clearance before departure under the Electronic System for Travel Authorization (ESTA). ESTA clearance cancellations will occur for travelers with a valid ESTA clearance who attempt to enter the U.S. on the VWP in violation of the travel ban. These revocations are reportedly without prejudice, meaning that those travelers will be able to apply for ESTA in the future to use the VWP.

If a foreign national is presently in the U.S. on the VWP/ESTA and cannot return to a designated COVID-19 travel ban country (those of the Schengen Area plus the UK and Ireland), they may qualify for Satisfactory Departure for a 30-day period. These foreign nationals on the VWP/ESTA do not qualify to file a status extension with USCIS as the VWP prohibits extensions. Their only option is to request a Satisfactory Departure for 30 days due to COVID-19.

U.S. Customs and Border Protection (CBP) has confirmed that this request may be submitted to the CBP Deferred Inspection Office of any port of entry. Otherwise, this process can be completed electronically at

certain CBP offices. If this is the situation for a particular foreign subsidiary employee visiting a U.S. business location, you should consider contact your legal counsel.

In addition, foreign nationals admitted on valid tourist visas in their passports for business or pleasure (not on the VWP/ESTA), may qualify to file I-539 Application for an Extension of Status. This must be determined on a case-by-case basis by consulting an immigration attorney.

What about U.S. citizens and LPRs (green card holders) and family members who are abroad and exempt from the travel bans?

Individuals who are exempted from the travel bans and are traveling to the U.S. are being directed to one of 13 designated U.S. airports where the U.S. government is focusing public health resources. These airports are: New York City (JFK), Chicago-O'Hare (ORD), San Francisco (SFO), Seattle-Tacoma (SEA), Honolulu (HNL), Los Angeles (LAX), Atlanta (ATL), Washington, D.C. (IAD), Newark (EWR), Dallas-Fort Worth (DFW), Detroit (DTW), Boston (BOS), and Miami (MIA).

There were reportedly long lines in the admissions process at some airports after [the most recent presidential proclamation](#). However, some of these issues appear to have eased up in the last few days.

We are in the midst of hiring H-1B workers. What impact does COVID-19 have on this process?

Currently, USCIS Service Centers where H-1B petitions are filed continue operating, although certain public-facing services at field offices are temporarily suspended, at least until April 1.

One of the procedural requirements for filing an H-1B petition is providing notice to U.S. workers in advance of submitting the petition. Often, employers provide such notice by posting the "Labor Condition Application" at the intended worksite. As a large share of U.S. employers require or offer the option of working from home due to COVID-19, a hard copy notice may not fulfill its intended purpose. Fortunately, the regulations also allow U.S. employers to provide such notice through electronic means. In these special circumstances, employers should typically consider providing electronic notice rather than a traditional hard copy posting notice.

While LCA notice requirements can be met electronically, employers should be aware that USCIS has not waived the requirement for original signatures or paper filings as of the date of this FAQ. Accordingly, practitioners and employers will need to coordinate paper filings and wet signatures for these petition filings during these trying circumstances.

We have mandated that all employees work from home. Can we also require an H-1B worker to work from home?

If you require all employees to work from you, the same rule would apply to your H-1B workers. Employers are prohibited from treating H-1B employees differently from other workers.

H-1B workers are typically limited to employment at the worksites listed on the Labor Condition Application (LCA) and the H-1B petition. However, an H-1B worker can also be employed at an additional worksite within the

same Metropolitan Statistical Area (MSA) as the primary worksite so long as notice is provided to all U.S. workers at that worksite. An MSA is defined as, “the area within normal commuting distance of the place (address) of employment where the H-1B nonimmigrant is or will be employed. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (e.g., normal commuting distances might be 20, 30, or 50 miles).”

Accordingly, if the H-1B worker’s home residence is within the same MSA as the employee’s normal worksite location, a new LCA need not be filed for the new worksite location; but the LCA posting notices should be posted at the employee’s home for 10 consecutive business days. Afterward, the posting notices must be placed in the Public Access File for that particular H-1B employee.

If the H-1B worker’s home is outside the MSA, H-1B regulations also permit the concept of a “short-term placement,” which is defined as a placement of 30 workdays or less per calendar year at a new worksite. A worksite that can qualify as a “short-term placement” does not require the posting of a LCA at the new worksite. Workdays are days actually worked and do not include weekends and holidays. It could therefore typically cover at least 6 weeks of work at a temporary location. The 30 workday limit is calculated in the aggregate for the calendar year. If some days have already been utilized under this option, then an employer will not have the full 30-day period for COVID-19 purposes.

In summary, given the nature of the COVID-19 related remote employment arrangement, many employers will find that H-1B workers can temporarily work from home under the LCA home posting or under a “short-term placement” arrangement. There are exceptions that may require individual consideration by employers and their immigration counsel.

We are in the midst of sponsoring an employee for permanent residency using the “PERM” process. What is the effect of COVID-19 and work from home arrangements on such sponsorship?

Like H-1Bs, Program Electronic Review Management (PERM) filings require that U.S. workers be advised and receive notice in advance of the PERM being filed. Unlike H-1Bs, PERM regulations mandate a hard copy posting notice that should be supplemented by an electronic notification, where appropriate. The regulations do not allow substitution of electronic notice in place of a hard copy.

Given the remote nature of most work arrangements right now, posting notice in an empty office is likely to run afoul of the spirit of the PERM regulations, at the very least. Further, if there is a remote work option for the position, this should be disclosed in the recruitment documents, at a minimum.

Accordingly, employers in the midst of a PERM recruitment should consider working closely with legal counsel to understand the risks and benefits of proceeding with recruitment at this stage.

We are a university and we wish to suspend live classes. We have many F-1 students enrolled in our programs and

are aware of the limitations on online credits in this program. Are there exceptions?

While the F-1 student regulations typically permit no more than one online credit per semester for international students, the Student Exchange and Visitor Program (SEVP) issued guidance in early March indicating that it would view the need for online coursework with a spirit of flexibility. Essentially, SEVP gave colleges and universities flexibility to design solutions that are consistent with the recommendations of local public health officials.

The SEVP also stated that higher education institutions did not need to secure permission before changing courses to an online format. Universities and colleges have been instructed to advise SEVP of any deviations within 10 business days of the change on remote learning procedures due to COVID-19.

I am scheduled to attend a citizenship interview, biometrics appointment, or green card interview at an immigration field office before March 31, 2020. Should I attend?

USCIS has suspended routine in-person services until at least April 1, 2020, due to COVID-19. USCIS intends to send notices to those applicants and petitioners with scheduled appointments and naturalization ceremonies impacted by the closure. USCIS also intends to automatically reschedule these appointments and ceremonies.

Who is affected?

Individuals with adjustment or naturalization interviews, naturalization oath ceremonies or biometrics appointments scheduled from March 18-April 1 will see these appointments automatically rescheduled in an attempt to limit the public and USCIS employees' risk of exposure to COVID-19.

Additionally, individuals who have scheduled INFOPASS appointments between March 1 and April 1 must proactively reschedule their appointments through the USCIS Contact Center as those appointments will not be automatically rescheduled or be conducted.

What if I have an emergency situation?

Limited emergency services appear to remain in place to address emergency travel needs. If you have a travel emergency, please confer with immigration counsel to discuss any travel plans before booking. Make sure you notify your attorneys of the needs for the trip, the length of the trip and the locations to be visited to ensure that the location is not affected by the evolving travel restrictions, which are constantly changing.

What about appointments scheduled after April 1, 2020?

USCIS will reevaluate its closures closer to April 1, 2020 and will send updates. Additionally, USCIS maintains a list of all office closures to be updated regularly as offices begin to resume normal operations.

If you have questions and are scheduled for a USCIS appointment after April 1, 2020, please contact your immigration attorney closer to March 31 for updates on affected USCIS operations.

How will we know when USCIS offices will reopen?

USCIS will [post periodic updates](#) and maintains a list of Field Office closures. As offices begin to reopen, USCIS will send updates to affected parties.

Has USCIS ceased all operations?

At this time, the USCIS Service Centers remain open and cases are being processed. We will continue to file new petitions with USCIS as well as meet deadlines on all pending petitions and applications. At this time, USCIS has not modified any deadlines or filing requirements.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, including Tejas Shah at 312-214-5619 or tejas.shah@btlaw.com, or Mercedes Badia-Tavas at 312-214-8313 or mbadiatavas@btlaw.com, or Michael Durham at 574-237-1145 or m.durham@btlaw.com.

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