



Returning workforce: Ensuring employment eligibility compliance after coronavirus (COVID-19) reductions

By Rachel Winkler and John Sandweg

Employers need to be prepared to ensure full compliance with employment eligibility verification rules when they bring their workers back after COVID-19 furloughs or layoffs. All U.S. employers must properly complete and maintain [Form I-9](#), Employment Eligibility Verification, for each individual they hire in the United States to verify identity and employment authorization. The U.S. Department of Homeland Security (DHS) has already [relaxed some I-9 and E-Verify requirements](#) temporarily due to COVID-19.

While no specific guidance has been issued, DHS will likely consider these returning employees to be [continuing in employment](#) when they are rehired, and a new Form I-9 will not be required. Employers should continue to maintain the completed Form I-9 as if there was no interruption in employment, and no new E-Verify case should be opened. However, employees whose employment authorization documents **expired** during the furlough or temporary layoff will need to provide new documentation to update their I-9 forms upon returning to work. There may be additional complications for [foreign national employees](#).

When the employee cannot be considered to have continued in his or her employment, and therefore, the employer cannot rely on the previously completed Form I-9, the employer has the option to complete just Section 3 of the form if the rehire occurs within three years from the date the previous Form I-9 was completed. Alternatively, or if the rehire occurs more than three years from the date the previous Form I-9 was completed, the employer should complete a new Form I-9. Employers should always use the [most current version of the form](#), which now reflects a version date of “10/21/2019.”

- If the employee remains employment-authorized as indicated on the previous Form I-9, the employee does not need to provide any additional documentation. Complete Section 3 of the existing form, or if not the current version, Section 3 on a new form.
- If the previous Form I-9 indicates that the employee’s employment authorization has expired, you must re-verify employment authorization in Section 3 in addition to providing the rehire date. If the previously executed Form I-9 is not the current version of the form,

you must complete Section 3 on the current version of the form.

- If you already used Section 3 of the employee's previously completed Form I-9, complete another Section 3, being sure to use the current version of the Form I-9, and attach it to the previously completed form.

If you are currently enrolled in E-Verify, you may need to create a new E-Verify case upon rehiring an employee, particularly if you never created an E-Verify case for him or her before, and his or her previous Form I-9 lists an expired identity document.

We are available to answer any questions you may have; please reach out to our [Cross-Border Risk team](#), your Nixon Peabody attorney, or:

- Rachel Winkler at rwinkler@nixonpeabody.com or 202-585-8027
 - John Sandweg at jsandweg@nixonpeabody.com or 202-585-8189
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