



Return to Business: COVID-19 Immigration Compliance – I-9 Update

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Seyfarth Shaw LLP

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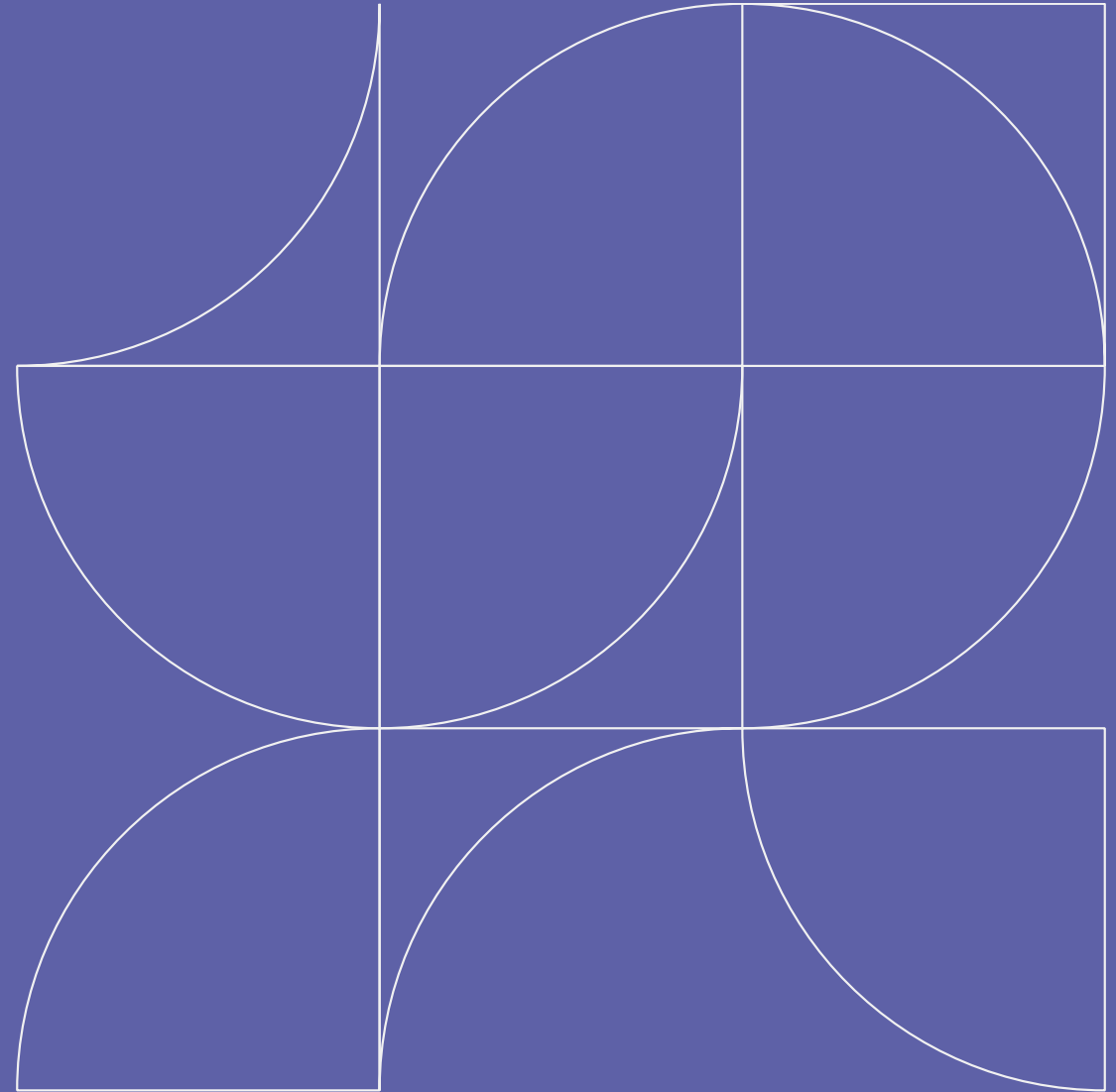
COVID-19 Compliance

- Compliance during COVID-19
- Webinar focus today only on COVID-19 due to attendee feedback
- We will hold an M-274 full webinar in the future
 - Significant changes in tone and clarity this edition
 - We are dealing with immediate M-274 concerns including the U.S. Citizenship and Immigration Service's new instructions on what must be recorded for H-1B Cap-Gap
 - Will keep clients updated
 - Overview from the Hill by our policy guru

Policy Updates From Washington DC

- Blanket ban of new H-2B nonimmigrants entering the U.S. unless the work involves duties that are essential to maintenance of the U.S. food supply chain;
- Blanket ban of new H-1B nonimmigrants entering the U.S. unless the beneficiary is being paid at wage level 4 for the job in the area of intended employment, and
- Blanket ban of all new L nonimmigrants entering the U.S.

COVID-19 Flexibility



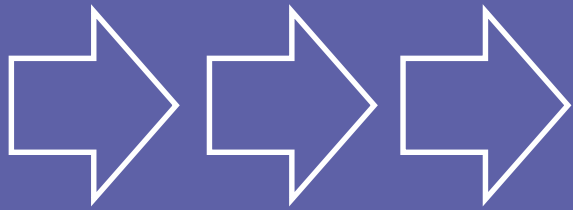
I-9 Rules: Overview Section 2

- Section 2 must be completed by the employer, or authorized representative
 - on or before the third day of work for pay (same as DOH)
 - Thursday Rule (hired on a Monday, S2 by Thursday)
 - Employees must present unexpired original documentation that identity and employment authorization
 - employees may choose which documentation to present
 - employers must conduct a physical inspection
 - In light of COVID-19 and remote work- requirement was difficult
 - Requests made to made to ICE for consideration
-

DHS Relaxes In-Person Requirement

- DHS Announces flexibility on Form I-9 Compliance on 03.20.20
 - DHS further extends flexibility another 30 days
 - *“Due to precautions being implemented by employers and employees related to physical proximity associated with COVID-19, the Department of Homeland Security (DHS) announced today that it will exercise discretion to defer the physical presence requirements associated with Employment Eligibility Verification (Form I-9) under Section 274A of the Immigration and Nationality Act (INA)”.*
 - DHS provides additional time to companies that were served with Notices of Inspection in early March
 - Homeland Security Investigations (HSI) instructions to field
 - clean up backlog
 - New NOIs?
-

COVID-19 OPTIONS



1. Virtual/Remote
2. Authorized Representative during COVID AKA “Friends & Family”
3. In-Person “normal” I-9

Option 1: Virtual/Remote Flexibility Option

- Who Qualifies?
 - Applies to employers and workplaces that are operating **remotely**
 - Initial Timing? S1 on Day 1 & S2 within three days of the employee's start date
 - Section 3 on or before expiration on work authorization or at rehire
 - What are our choices?
 - Inspection video (Facetime, Zoom, Goto, Chime, Google Meets), fax, email
 - Must mandate copies, regardless of current policy
 - How does it work?
 - Develop and maintain “written documentation of their remote onboarding and telework policy for each employee.”
 - Define process based on Paper vs. Electronic
 - Avoid confusion and ensure clarity: direct initial I-9 Completers to annotate Section 2 “**COVID-19: Completed Virtually/Remotely**” in the *Additional Information Box*
-

Option 1: Virtual/Remote Basics Flexibility Option

- Once normal operations resume
 - New Hire must be verified **in-person** within the three day time period
- During in-person verification, ensure that “**COVID-19: Completed Remotely or Virtually**” was already entered in Section 2 *Additional Information Box* or Section 3 (if for reverification) by the original I-9 Completer
- Attestation for Fax/Email, the same as on video?
- I-9 “In-Person” Completer of original documents should put a 2nd annotation in the *Additional Information Box* to include their name & the date completed

**COVID-19: Documents Physically Examined by [Jane Smith] on
07/04/20**

Option 1: Virtual/Remote (Flexible): Section 2 Certification

Certification: I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions)

Signature of Employer or Authorized Representative		Today's Date (mm/dd/yyyy)		Title of Employer or Authorized Representative	
Last Name of Employer or Authorized Representative		First Name of Employer or Authorized Representative		Employer's Business or Organization Name	
Employer's Business or Organization Address (Street Number and Name)			City or Town		State ZIP Code

- ICE says: Add “*Documents physically examined*” with the date of inspection to the Section 2 additional information field on the Form I-9, or section 3 as appropriate” See *ICE press release* OR
- USCIS says: Section 2 should be completed by physically examining both the employee and the work authorization documents, **whoever does this, should sign Section 2.** See *USCIS Q&As on their Webpage*

Option 1: Virtual/Remote (Flexible) Things to Think About

- The Ownership Logistics:
 - How are the I-9s documents saved/uploaded?
 - Who is tracking this for the company?
 - Are Human Resources managers/staff going to return these I-9s to the office?
 - Should WFH HRs be mailing the I-9s in somewhere centralized?
 - PII, safeguarding at home
 - Memorialize Everything, DHS said
 - “Anyone business using Remote/Virtual Process, must memorialize, in writing, the company’s remote onboarding and telework policy for each employee”
-

Option 2: Authorized Representatives- Friends & Family

- Who can use this method? Everyone
 - It's always been allowable
 - Employer “designates” the Representative
 - generally employees are choosing now
 - Timing? The Same
 - What are the Choices?
 - Pre-Covid 3rd party vendors, notaries, professionals etc.
 - Currently Friends & Family
 - How does it work?
 - Outline process including directives to employee (parameters?)
 - Include instructions to I-9 Completer
 - Sample I-9, Form I-9 instructions, link to M-274, a cheat sheet
-

Option 2: Authorized Representative Reality

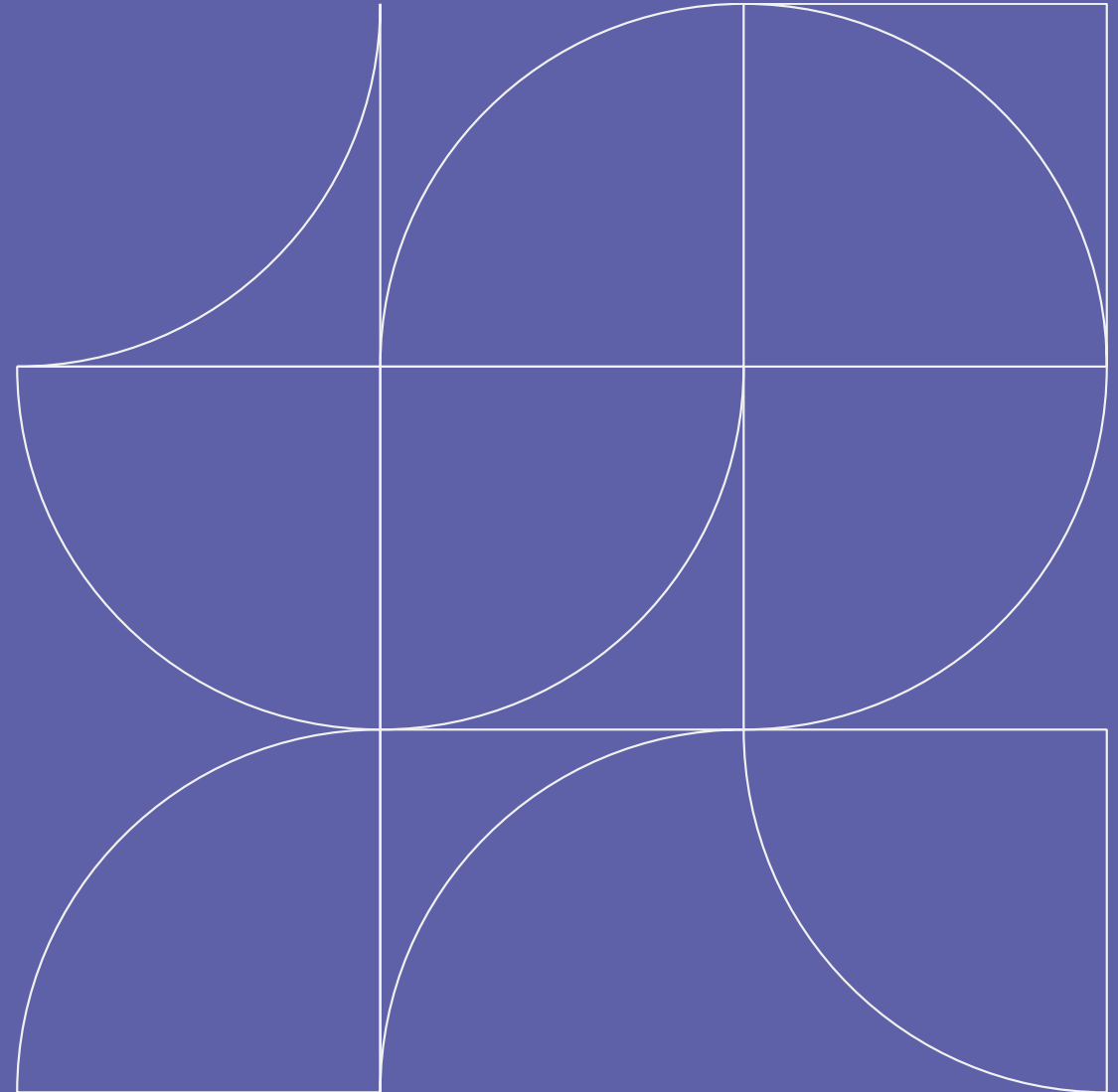
- Drafting an Authorized Representative Policy or Updating an existing one requires thought and care.
- Best Practices
 - Document Copies
 - gates to ferret out fraud
 - Strong secondary review
 - E-Verify? Best Practice always but not fool proof
- Critical Considerations
 - Electronic I-9 software
 - Copies/PII
- Logistics
 - Ownership
 - Process (mail, storage, tracking)



Option 3: Regular I-9 Completion

- Business as usual
- Consider document copies, if not already doing so
- Consider E-Verify
- Big Shifts in the legacy workforces for the first time in many years

Industry Sector Surprises: Hiring Surges and Returning to Work



Hiring Surge or Just Plain Industry Hiring Concerns

- What's happening in certain industry sectors?
- Workforces are shifting
 - not eligible for unemployment or other benefits
 - departing certain industries and willing to work in any job
 - restaurants, hotels, retail
- Pre-1986 hires who were never completed an I-9 at prior job
 - needing to present documents for the first time
- Working with bad documents previously
- Now applying to new employers
- E-Verify- government's online system to verify the work eligibility of employee
 - Higher incidences of Tentative Non-Confirmations during COVID

Returning to Work

- Several issues to consider
 - Virtual/Remote vs. initial In-Person
 - I-9 review critical post RTW regardless of method
 - ICE *stated “Any audit of subsequent Forms I-9 would use the “in-person completed date” as a starting point for these employees only”.*
 - Fraud during any type of review
- Now is the time to develop tight processes and safeguards
 - Working through the logistics and mapping everything out is key
 - Every company will have certain nuances in their processes
 - Factors such as industry or even the types of I-9 used make a difference
- Friend & Family Reviews?
- Untrained professionals or employees assisting during COVID-19 common

Examples of Fraudulent Documents

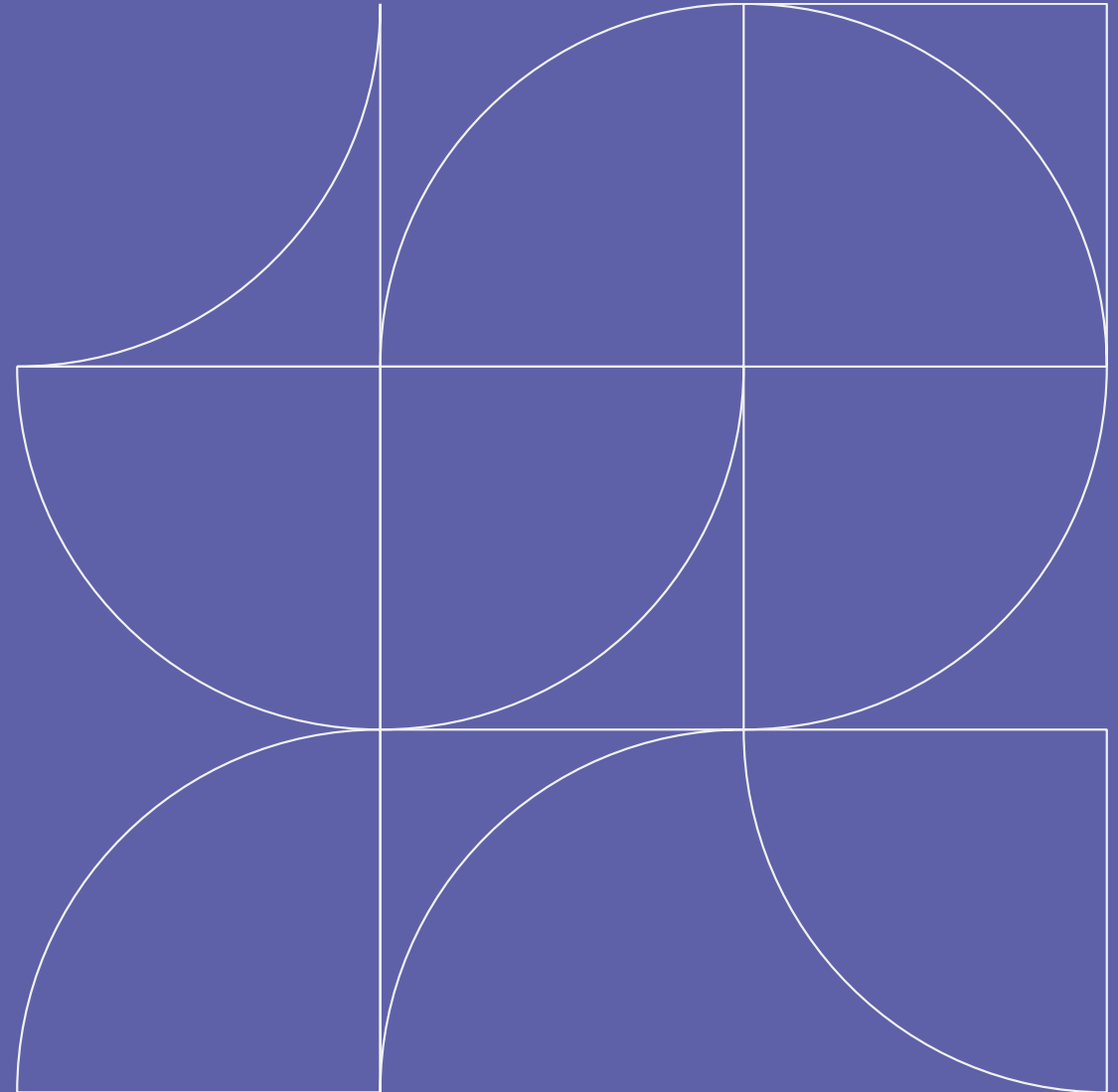


- The Reasonable Person Standard:
 - Examine the documentation your employee presents
 - You are not required to be a document expert
- If the employee presents a document different than what they presented during remote completion, and it looks genuine, that is OK

Current Permanent Resident Card



Other COVID-19 Flexibilities



Initial Temporary Driver's License/ ID Policy

- April 3, 2020 Initial USCIS Q& A
 - If employee's state ID or driver's license expired on or after March 1, 2020, and **the document expiration date has been extended** by their state due to COVID-19, then it is acceptable as a List B document for Form I-9
- How to complete the I-9
 - Enter the document's expiration date in Section 2 and enter **"COVID-19 EXT"** in the Additional Information field
 - Employers may also attach a copy of the state motor vehicle department's webpage or other notice indicating that their documents have been extended
- How were employer's to track? What about other docs?



Completing an I-9 with an Expired List B

R	List B Identity	AND	List C Employment Authorization
	Document Title Driver's License		Document Title SSC
	Issuing Authority Virginia DMV		Issuing Authority SSA
	Document Number T12345678		Document Number 123-45-6789
	Expiration Date (if any) (mm/dd/yyyy) 3/1/2020		Expiration Date (if any) (mm/dd/yyyy) N/A
<div><div>Additional Information COVID-19 EXT</div><div>QR Code - Sections 2 & 3 Do Not Write In This Space</div></div>			

- Enter the document's expiration date in Section 2; and,
- Enter "COVID-19 EXT" in the Additional Information Field
- **May** also attach a copy of a webpage or other notice indicating that the issuing authority extended documents
- You can confirm state has auto-extended the expiration date of state IDs and driver's licenses by checking the DMV website

Updated Temporary List B Policy

- May 1, 2020 Updated USCIS Policy Issued
 - From May 1, 2020 employers may accept ANY List B set to expire on or after March 1, 2020, including those that have not been formally extended by the state's issuing authority
 - Umm, didn't that already happen? Well, kind of
- The difference between the initial announcement and this one is:
 - No extension from state of expiration date?
 - No worries, treat thee expired List B valid receipt for an acceptable document
- Must be treated as a I-9 receipt?
- The I-9 will need to be updated within 90 days after the termination of this temporary List B document policy
- This is a lot of responsibility – make no mistake

Completing an I-9 with an Expired List B

R	List B Identity	AND	List C Employment Authorization
	Document Title Driver's License		Document Title SSC
	Issuing Authority Virginia DMV		Issuing Authority SSA
	Document Number T12345678		Document Number 123-45-6789
	Expiration Date (if any) (mm/dd/yyyy) 3/1/2020		Expiration Date (if any) (mm/dd/yyyy) N/A
Additional Information COVID-19		QR Code - Sections 2 & 3 Do Not Write In This Space	

- Record the document information in Section 2 under List B, as applicable; and,
- Enter the word “**COVID-19**” in the Additional Information Field- yes again.....
- E-Verify-use Expired Document

Receipt Update

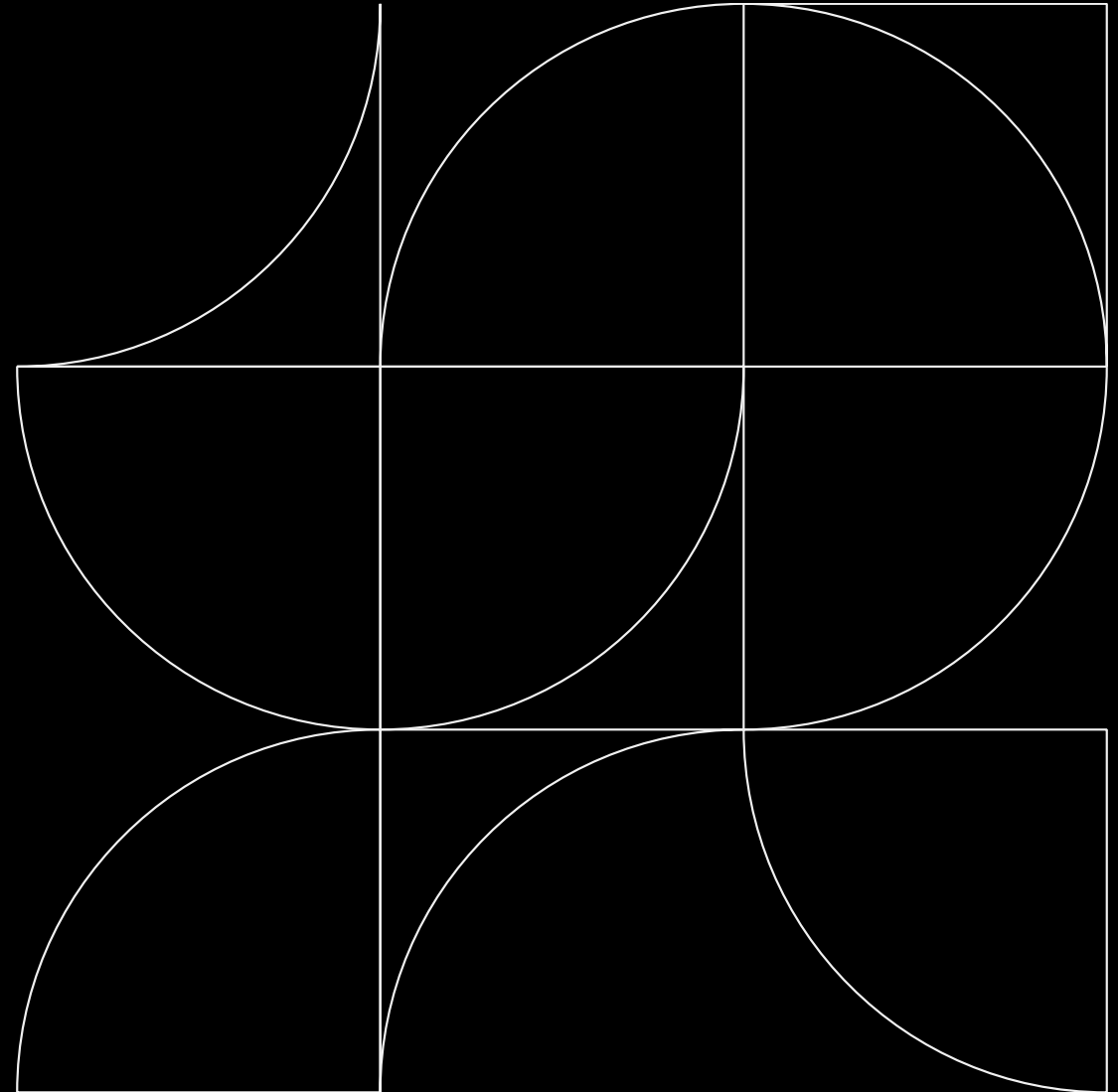
R	List B Identity	AND	List C Employment Authorization
Document Title	Driver's License	Document Title	SSC
Issuing Authority	Virginia DMV	Issuing Authority	SSA
Document Number	T12345678	Document Number	123-45-6789
Expiration Date (if any) (mm/dd/yyyy)	3/1/2020	Expiration Date (if any) (mm/dd/yyyy)	N/A
<div><div>Additional Information COVID-19 T87654321 3/1/2028 J. Doe 10/3/2020</div><div>QR Code - Sections 2 & 3 Do Not Write In This Space</div></div>			

- After the 90 days, in the Section 2 Additional Information field:
 - Record the number and other required document information from the actual document presented
 - Initial and date the change
 - New document? No worries
 - Record the new List A or B in the field

E-Verify Flexibility

- E-Verify:
 - Extending time to resolve a Tentative Non-Confirmation results
- Section 2:
 - If you are reviewing an individual's document(s) remotely, the documents have to be reviewed within three days of the remote hire date
 - This does not change the requirement that when employee returns to work a physical inspection of the documents must take place and employer should sign and date

Questions?



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Coming up

- Visit Seyfarth's COVID-19 Resource Center to sign up for daily updates: www.seyfarth.com/covid19
- Webinars Coming Up
 - Return to Business: What the Western States Pact Means for Reopening Business Out West
 - Return to Business: Serving Customers with Disabilities While Implementing COVID-19 Safety Measures
- Post-Pandemic Return to Work Checklist





**Post-Pandemic
Recovery and Renewal**

Planning and Executing a Strategic and Successful Return to Work

We have assembled a cross-disciplinary Recovery and Renewal team who can advise you on the current state of business impact as a result of COVID-19, and what the future holds for business. Our team of 100+ lawyers is already deeply credentialed, having advised thousands of clients on the developments of the rapidly changing pandemic across the globe. We have a deep understanding of how the pandemic is affecting businesses and industries deemed essential and non-essential, and the related legal, business, and workforce issues specific to all. Likewise, we are already helping clients build phased return-to-work plans by modeling various scenarios for how business might resume—from continued social distancing to a full engagement of their workforces in full operations.

We are ready to leverage our knowledge to help you reengage in business—and grow.

We recognize that your business is unique and the legal landscape faces unprecedented complexity. Accordingly, we employ a three-step process to prepare a comprehensive, bespoke return-to-work toolkit for our clients.

1. Review

- Investigation and audit of pre-pandemic business status quo
- Step-by-step checklist addressing business elements and pandemic
- Establish goals and overall business strategy for near, mid, and long term

2. Analysis

- Business review in the new legal and business landscape using Seyfarth's in-depth **Return to Work Treatise**
- Strategic conversations regarding return-to-work timing, business considerations, and growth opportunities
- Identification of legal landmines with strategies for minimizing risk

Return to Work Selection Process Guide

3. Implementation

- Execution of custom plan for return to work: phased/all/none; employee selection; employee screening protocol; workplace safety plan; communications cascade
- Access to Seyfarth's first-in-class **Policy, Communications & Tracker Repository**

• Positive test / confirmed Case	• Face covering	• Work from home
• Temperature screening	• Business travel	• FFCRA request
• Antibody testing	• Expense reimbursement	• Infectious disease
• Social distancing	• Visitor self-Declaration	

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www.seyfarth.com/covid19

COVID-19 Resources



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thank you!