

I-9 Deadline Approaching: Employers Have Until July 31 to Update Critical Immigration Forms



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Related Practice Areas

- Immigration Policy & Strategy
- Labor & Employment

Overview

- The Department of Homeland Security (DHS) adopted the temporary policy in response to the difficulties many individuals experienced with renewing documents during the COVID-19 pandemic.
- Now that document-issuing authorities have reopened and/or provided alternatives to in-person renewals, DHS ended this flexibility on May 1, 2022, and employers must only accept **unexpired** List B documents.
- March 2020 Employment Eligibility Verification (Form I-9) physical document inspection flexibilities have been extended to October 31, 2022.

Changes to I-9 due to COVID-19

Due to the COVID-19 pandemic, many individuals were required to stay at home, preventing them from renewing certain documents required for I-9 verification (i.e., driver's licenses) for List B. As such, DHS issued a temporary policy regarding expired List B identity documents used to complete Form I-9, Employment Eligibility Verification.

As of May 1, 2020, identity documents found in List B set to expire on or after March 1, 2020, and not otherwise extended by the issuing authority, were treated the same as if the employee presented a valid receipt for an acceptable document for Form I-9 purposes.

Some COVID-19 Leniencies were Lifted as of July 31, 2022

On July 6, 2022, DHS announced that employers are required to update their Forms I-9 by July 31, 2022, for all employees who completed their I-9 verifications with expired documents between May 1, 2020, and April 30, 2022.

If an employee presented an expired List B document between May 1, 2020, and April 30, 2022, employers are required to **update their Forms I-9 by July 31, 2022.**

If the employee is still employed with your company:

- Have the employee provide an unexpired document that establishes identity. Employees may present the renewed List B document, a different List B document, or a document from List A.
- In the "Additional Information" field of Section 2, the employer enters the document:
 - Title;
 - Issuing authority;
 - Number;
 - Expiration date; and
 - The employer initials and dates the change.
- If the employee is no longer employed with your company, then no action is required
- If the List B document was automatically extended by the issuing authority such that it was unexpired when presented, no action is required because the document was unexpired when presented.

March 2020 I-9 document inspection flexibilities extended until October 31, 2022

- Employers are not required to physically inspect I-9 documentation due to a temporary measure implemented by DHS). This flexibility has been extended through October 31, 2022.
- This applies only to employees who work 100% remotely.
- Once the employee returns to the office on a regular basis, the I-9 documentation must be physically inspected by a company representative.
- DHS will evaluate certain COVID-19-related Form I-9 completion practices on a case-by-case basis.

Employers are required to physically inspect the I-9 documentation for all employees. However, back in March 2020, DHS announced certain flexibilities for this requirement in light of the COVID-19 pandemic. Specifically, the requirement that employers inspect employees' Form I-9 identity and employment eligibility documentation in person applies **only** to those employees who physically report to work at a company location on any regular, consistent, or predictable basis.

If employees hired on or after April 1, 2021, work exclusively in a remote setting due to COVID-19-related precautions, they are temporarily exempt from the physical inspection requirements associated with Form I-9 under Section 274A of the INA until they undertake non-remote employment on a regular, consistent, or predictable basis, or the extension of the flexibilities related to such requirements is terminated, whichever is earlier.
