

Temporary I-9 Policies Related to COVID-19 Ending Soon

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The U.S. Department of Homeland Security (DHS) announced that it is ending the temporary COVID-19 policy of allowing employers to use expired List B identity documents to complete Form I-9. Beginning May 1, employers may no longer accept expired List B identity documents, which include driver's licenses and state ID cards. Temporary remote I-9 verification policies will also sunset this month.

DHS adopted temporary I-9 flexibilities early in the pandemic in response to the difficulties many individuals were experiencing with renewing documents. At the time, many locations were under stay-at-home orders, and agencies responsible for issuance and renewal of state drivers' licenses and ID cards were closed to the public or operating on a restricted basis. According to DHS, now that most businesses have reopened, DHS will end the temporary flexibilities.

End of Temporary Policy on Expired Documents

Starting May 1, 2022, employers must only accept unexpired List B documents. Employers will have until July 31, 2022, to update the I-9s of current employees who presented expired List B identity documents under the temporary policy.

Employers who accepted an expired List B identity document while the temporary order was in effect, i.e., between May 1, 2020, and April 30, 2022, must take the following actions to update their Forms I-9:

- If the employee who presented the expired List B document is no longer employed, no action is needed.
- If the List B document presented was auto-extended by the issuing authority, no action is needed.
- If the employee is still employed and the expired List B document was not auto-extended, then the employee must provide an unexpired document that establishes identity. This can be a renewed version of the expired List B document that was previously presented, a different unexpired List B document, or an unexpired List A document.

The employer should enter the new document information in Section 2 of the Form I-9, and then initial and date that section of the form.

Remote I-9 Verification

On March 20, 2020, DHS announced other flexibility provisions for Form I-9 compliance due to the pandemic. Those provisions relate to the relaxation of the in-person I-9 verification requirement. DHS temporarily allowed for "remote verification" and electronic review of documents presented by employees for Form I-9 completion, allowing employers, in certain circumstances, to complete the I-9 document review process remotely or via email, fax, or video link.

The flexibility provisions only apply to employers and workplaces operating remotely, or for employees hired after

April 1, 2021, who work exclusively in a remote setting due to COVID-19 precautions.

DHS extended the in-person document review flexibilities multiple times in 2020 and 2021, but the temporary policy is set to end on April 30, 2022. Employers who used the temporary I-9 policy are required to physically inspect the documents of affected employees within three days after normal operations resume.

Re-verifying employees in person upon return-to-work has been required since the enactment of the temporary COVID-19 flexibilities. However, with these flexibilities officially ending on April 30, worksite enforcement actions are expected to ramp back up. Therefore, employers who adopted remote I-9 procedures during the pandemic are strongly encouraged to inspect the documents of all affected employees as soon as possible to limit their risk of fines and other penalties in the event of an I-9 inspection. Employers should also remember that I-9 practices, including I-9 re-verification and audit practices, must be implemented consistently and in a non-discriminatory manner.

DHS is expected to introduce a permanent virtual I-9 policy during fiscal year 2022. However, it is unclear whether the permanent virtual policy will remove the requirement that I-9s completed remotely during the pandemic be updated with an in-person review. Companies are therefore urged to move away from remote I-9 practices for the time being, and to update I-9s that were completed pursuant to the temporary COVID-19 flexibilities.

We will continue to monitor these provisions and provide updates. If you have questions about updating your Form I-9s on behalf of your company, please contact any member of [Barley Snyder's Immigration Practice Group](#).