

Articles + Publications | May 2, 2022

## Changes to Certain Temporary COVID-Related I-9 Rules

### WRITTEN BY

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Not long after the president declared the country in a state of national emergency due to the COVID-19 pandemic, the Department of Homeland Security (DHS) put in place the following rule:

“Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee’s identity and employment authorization documents in the employee’s physical presence. However, employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain copies of the documents, within three business days for purposes of completing Section 2. Employers also should enter “COVID-19” as the reason for the physical inspection delay in the Section 2 Additional Information field once physical inspection takes place after normal operations resume. Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 additional information field on the Form I-9, or to section 3 as appropriate. These provisions may be implemented by employers for a period of 60 days from the date of this notice OR within 3 business days after the termination of the National Emergency, whichever comes first. Employers who take advantage of the COVID-19 rule must provide written documentation of their remote onboarding and telework policy for each employee. This burden rests solely with the employers.”

This temporary guidance had been extended several times and was most recently set to expire April 30. This guidance has once again been extended until **October 31**. Please see the [original notice and guidance](#), which provides detailed information on the factors required to take advantage of this guidance.

On the other hand, DHS is not extending the temporary policy that allows employers to accept expired List B documents (due to difficulties with renewing identity documents during the pandemic). This policy will sunset on April 30.

See the following announcement from DHS: “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. See table below for update requirements.”

<b>If the employee’s Form I-9 was completed between May 1, 2020 and April 30, 2022 with an expired List B document and that document expired on or after March 1, 2020, and the employee:</b>	<b>Then:</b>

	<ul style="list-style-type: none"> <li>• Have the employee provide an unexpired document that establishes identity. Employees may present the renewed <a href="#">List B</a> document, a different List B document, or a document from <a href="#">List A</a>.</li> <li>• In the “Additional Information” field of Section 2, the employer enters the document: <ul style="list-style-type: none"> <li>◦ Title;</li> <li>◦ Issuing authority;</li> <li>◦ Number; and</li> <li>◦ Expiration Date.</li> </ul> </li> <li>• The employer initials and dates the change. <a href="#">See Form I-9 example</a>.</li> </ul>
Is <del>still</del> employed.	No action is required.
The List B document was auto extended by the issuing authority, so it was unexpired when presented.	No action is required because the document was unexpired when presented.

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