

Form I-9 COVID-19 Document Relaxation Rule Coming to an End

Labor & Employment Law Update

By Sara Zorich on March 30, 2022



The Department of Homeland Security (DHS) announced that it is ending the List B identity document flexibilities it had provided employers since May 2020. Starting on May 1, 2022, employers may **ONLY** accept **UNEXPIRED** List B documents. That means the List B document must be unexpired on its face when it

is presented to the employer during the Form I-9 process.

Further, employers that accepted expired List B documents between May 1, 2020 and April 30, 2022 need to review their Form I-9's to determine if any update to the Form I-9 is required for those employees. DHS has indicated that the following steps should be addressed and any necessary forms updated no later than July 31, 2022:

- If the employee is still employed and the document's expiration date was not auto-extended by the issuing authority, 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 on the Form I-9, the employer needs to enter the document: title, issuing authority, number and expiration date. The company employee making the changes needs to initial and date the change.
- If the List B document's expiration date was auto-extended by the issuing authority of the document prior to presentation during the Form I-9 process, DHS is treating that as "unexpired when presented" and no further action is required.
- If the employee is no longer employed, no further action is required.

Employers should review their Form I-9 process and ensure those employees responsible for completing Section 2 of the Form I-9 on the company's behalf are aware of these changes. Failure to do so can lead to substantial fines during a governmental Form I-9 audit.

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