

Form I-9 Update – Employers May Accept an Alternative to an Employment Authorization Document in Light of Governmental Delays

Labor & Employment Law Update

By Sara Zorich on August 25, 2020

On August 19, 2020, U.S. Citizenship and Immigration Services (USCIS) announced that due to delays in production of certain Employment Authorization Documents (EAD's – Form I-766) that employees may use Form I-797, Notice of Action as valid List C #7 document for Form I-9 purposes. To be valid, the Notice of Action must have a notice date on or after December 1, 2019 through and including August 20, 2020. If an employee presents a Form I-797, Notice of Action as a List C document, then the employees **MUST** also present a List B document. The Form I-797, Notice of Action is **NOT** evidence of someone's identity and cannot be used as a List A or List B document.

Employees may present and employers may accept the Form I-797 Notice of Action showing approval of the employee's I-765 application as a list C document for Form I-9 compliance **until December 1, 2020**. By December 1, 2020, employers must reverify employees who presented a valid Form I-797, Notice of Action. Those employees can either provide a List A document or a different List C document for the reverification process.

Additionally, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) announced an extension to the flexibility policy for employers and workplaces that are operating remotely which we previously reported on this past March. The extension of the policy is valid through September 19.