Flexibility on I-9 verification process is extended as COVID-19 continues

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In March, as a result of the COVID-19 pandemic, the U.S. Department of Homeland Security allowed more flexibility for employers seeking to verify documentation for I-9 forms. The DHS has now extended that flexibility for another 30 days, until September 19.

The Immigration Reform and Control Act of 1986 requires employers to verify the identity and employment eligibility for all employees hired in the United States by completing and retaining the I-9 Employment Eligibility Verification Form. The normal process requires that the employer physically inspect the identity and employment eligibility documentation provided by the employee in the employee’s physical presence, and then sign Section 2 of the form.

However, for employees working remotely because of restrictions related to COVID-19, the DHS suspended the requirement for in-person examination of the employee’s I-9 documents. The relaxation of the in-person requirement began March 20 and was set to expire on August 19, but DHS has now extended it until September 19.

Second, the DHS has addressed the delays in the production of certain Employment Authorization Documents (Form I-766). The EAD card is a “List A” document that satisfies the I-9’s requirements that an employee prove that he or she is authorized to work in the United States.

The DHS announced on August 20 that employees may use I-797 Approval Notices for the EAD card dated from December 1, 2019, through August 20, 2020, instead of EAD cards. The I-797 notice would be a “List C” document that establishes employment authorization and can be used in place of an EAD card through December 1, 2020. For Form I-9 completion, the employee is also required to provide a “List B” document establishing identity. Thereafter, the employer is required to reverify the employee’s eligibility for employment with an approved document from List A or List C by December 1, 2020.

We encourage employers to accept new EAD cards presented by employees as soon as they receive them from the U.S. Citizenship and Immigration Services, to satisfy the reverification requirement. However, employees have the option of presenting a new EAD card, or a different document from List A or List C.
Also, as a reminder, employers should be sure that their I-9s are in good order so they are ready when the Immigration and Customs Enforcement resumes I-9 audits. The fines for I-9 violations are $232 to $2,292 per violation. Before the pandemic began, the Trump Administration was aggressively performing I-9 audits.

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