

IMMIGRATION

DEPARTMENT OF HOMELAND SECURITY ANNOUNCES EXPIRATION OF TEMPORARY COVID-19 POLICY REGARDING I-9 LIST B IDENTITY DOCUMENTS

The U.S. Department of Homeland Security (“DHS”) has announced the end to its COVID-19 temporary I-9 policy relating to List B identity documents. List B documents are sometimes presented through the I-9 process to prove an employee’s identity. This policy, first enacted May 1, 2020, allowed employers to accept expired List B identity documents (such as state driver’s licenses) for I-9 purposes. As of May 1, 2022, employers may no longer accept expired List B documents. Further, employers who took advantage of this policy may need to take corrective action before July 31, 2022.

If an employer accepted an expired List B document for I-9 purposes between May 1, 2020 and April 30, 2022, additional action may be required, as noted below:

- If the expired List B document was technically valid at the time of presentation based on an automatic extension by the issuing authority, no action is needed. For example, many states automatically extended the validity of driver’s licenses for a limited period during the pandemic. Employers should store evidence of the issuing authority’s automatic validity extension with the completed Form I-9.
- If the expired List B document was not otherwise extended by the issuing authority at the time of presentation, employers should immediately request that employees work to produce a new List B document no later than July 31, 2022. Employees may present the renewed version of the document provided initially, or a different List A or List B document. The employer should record the following information in the “Additional Information” field in Section 2 with respect to the new document: Document Title, Issuing Authority, Number, and Expiration Date. The employer should then initial and date in that field.
- If the employee is no longer employed, no action is required.

Note that this announcement does not affect the DHS’s current policy allowing for remote I-9 completion. That policy remains in place until at least October 31, 2022.

Please contact any member of the Immigration practice group with questions regarding this LEGALcurrents at 585.232.6500 or visit www.hsela.com.

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