Client Alert: Department of Homeland Security Announces End to COVID-19 Temporary Policy for Expired List B Identity Documents

BY TRACY THOMAS BOLAND AND RAYMOND M. RIPPLE • MARCH 28, 2022

The Department of Homeland Security (DHS) recently announced an end to its COVID-19 Temporary Policy for List B Identity Documents (Temporary Policy). Under the Temporary Policy, for purposes of I-9 completion, DHS permitted employers to accept List B identity documents set to expire on or after March 1, 2020, and not otherwise extended by the issuing authority, and treat the documents as if the employee presented a valid, acceptable document for Form I-9 purposes. DHS adopted the Temporary Policy in response to difficulties many individuals experienced with renewing documents during the COVID-19 pandemic. Now that document-issuing authorities have reopened and alternatives to in-person renewals have been provided to individuals, DHS is ending the Temporary Policy.

Effective May 1, 2022, employers will no longer be permitted to accept expired List B documents for Form I-9 completion. Examples of common List B documents include a driver's license or identification card issued by a state or territory of the U.S., voter registration card, U.S. military card or draft record, or a school ID card.

If employers accepted expired List B identity documents during the effective date of the Temporary Policy (May 1, 2020 through April 30, 2022), employers must obtain updated I-9 documents and unexpired List B identity documents by July 31, 2022. If an employee who presented an expired List B document is still employed, the employee must provide an unexpired document that establishes identity. To meet this requirement, the employee may present a renewed version of the expired List B document that was previously presented to the employer, a different unexpired List B document, or an unexpired List A document that establishes both identity and work authorization. When presented with the new documentation, employers should enter the following information about the new document in the Additional Information Field of Section 2 of the Form I-9: title, number, issuing authority, and expiration date. The employer should then initial and date that section of the form.

If an employee who presented expired documents under the Temporary Policy is no longer employed by the company, then no further action is required. If the List B document presented by an employee was auto extended by the issuing authority, then no action is required because the document was unexpired when it was originally presented.

Employers with questions should consult their Bowditch Employment & Labor attorneys.

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