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Benefits**Employment Question of the Day: May 5, 2020****Legal Update**

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By Bridget R. Penick

Question**Can employers complete I-9 forms with expired List B documents during the COVID-19 pandemic?****Answer**

Yes.

The Department of Homeland Security has issued a temporary policy to employers completing Form I-9 in the wake of the novel coronavirus outbreak when state agencies are not issuing or renewing driver's license or state ID cards. We have compiled some of these tips here regarding the temporary policy and related I-9 issues:

- As of May 1, employers are required to use the 10/21/19 edition of form I-9.
- When an employee presents a List B identity document that expired on or after March 1, 2020, and the issuing authority **has extended** the document expiration date due to COVID-19, the document is acceptable as a List B document for Form I-9 (not as a receipt) during the extension timeframe specified by the issuing authority. You should:
 - Enter the document's expiration date in Section 2; and
 - Enter "COVID-19 EXT" in the Additional Information Field.
- Employers may also attach a copy of a webpage or other notice indicating that the issuing authority has extended the documents.
 - Iowa's driver's licenses need not be renewed during the COVID-19 emergency, which is currently extend to May 27.
 - On March 28, Minnesota law was enacted that extends driver's licenses that expire during the COVID-19 emergency for two months after peacetime emergency ends.
 - In North Dakota, the Governor's Emergency Declaration waived expiration dates for driver licenses from March 1, 2020, until declared disaster has

ended.

- Employers can confirm that other states have auto-extended the expiration date of state IDs and driver's licenses by checking the state Motor Vehicle Administration or Department of Motor Vehicles' website.
- Note: For extended documents, the employee is not required to later present a valid unexpired List B document.
- When an employee presents a List B identity documents set to expire on or after March 1, 2020, and the expiration has **not been extended** by the issuing authority, it may be treated the same as if the employee presented a valid receipt for an acceptable document for Form I-9 purposes and you should:
 - Record the document information in Section 2 under List B, as applicable; and
 - Enter the word "COVID-19" in the Additional Information Field.
 - Within 90 days after DHS's termination of this temporary policy, the employee will be required to present a valid unexpired document to replace the expired document presented when they were initially hired. USCIS advises: It is best if the employee can present the replacement of the actual document that was expired, but if necessary, the employee may choose to present a different List A or List B document or documents and record the new document information in the Additional Information Field.
 - When the employee later presents an unexpired document, you should, in the Section 2 Additional Information Field, record the number and other required document information from the actual document presented and initial and date the change.
- E-Verify participating employers should use the employee's expired List B document number from Section 2 of the Form I-9 to create an E-Verify case as usual within three days of the date of hire.
- As previously reported on Fredrikson's USCIS COVID-19 Updates, USCIS announced on March 20 temporary deferral of the normal physical presence requirements affiliated with form I-9 for a period of 60 days from March 20 OR within three business days after the termination of the National Emergency, whichever comes first, for workplaces operating remotely:
 - Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in the employee's physical presence.
 - Employers must inspect the Section 2 documents remotely (e.g., video link, fax or email, etc.) and obtain, inspect and retain copies of the documents, within three business days for purposes of completing Section 2.
 - Employers also should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information Field once physical inspection takes place after normal operations resume.
 - Once normal operations resume, all employees who were onboarded using remote verification must report to their employer within three business days

for in-person verification of identity and employment eligibility documentation for Form I-9, Employment Eligibility Verification.

- Once the documents have been physically inspected, the employer should add “documents physically examined” with the date of inspection to the Section 2 Additional Information Field on the Form I-9, or to Section 3 as appropriate.
- Employers who avail themselves of this option must provide written documentation of their remote onboarding and telework policy for each employee.
- If there are employees physically present at a work location, no exceptions were implemented for in-person verification of identity and employment eligibility documentation for Form I-9. However, if newly hired employees or existing employees are subject to COVID-19 quarantine or lockdown protocols, DHS will evaluate this on a case-by-case basis.

If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor or Immigration attorney.

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