



U.S. Citizenship and Immigration Services

What's New

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05/21/20

Form I-9 Completion by Employers of Certain H-2B Nonimmigrants Permitted to Start Work Because of Temporary Rules in Effect Due to the COVID-19 National Emergency

On May 12, the Department of Homeland Security published a [temporary final rule to change certain H-2B requirements](#) to help secure the U.S. food supply chain and reduce the economic impact of the coronavirus (COVID-19) public health emergency on H-2B employers. The temporary flexibilities are available through Sept. 11, 2020.

The temporary final rule allows employers that have properly filed H-2B extension of stay petitions and [Form ATT-H2B, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Essential to the U.S. Food Supply Chain \(PDF\)](#), between certain dates to begin employing certain H-2B workers while USCIS adjudicates their petition. The workers must currently be in H-2B status but working for a different employer. If so, a new employer may begin employing the H-2B workers on or after the date that USCIS receives the extension of stay petition (as stated on Form I-797, Notice of Action, receipt notice) or the date USCIS acknowledges in writing receipt of a properly filed attestation, Form ATT-H2B but no earlier than the start date of employment listed on the H-2B petition.

The temporary rule applies if USCIS received the new employer's extension of stay H-2B petition on or after March 1, and it remains pending as of May 14, or USCIS receives the H-2B petition between May 14 and Sept. 11, 2020. In both cases, USCIS must also receive a Form ATT-H2B

Under this temporary final rule, the new employer may employ the H-2B worker while the extension of stay petition is pending, for a period not to exceed 60 days starting from the:

- Received Date on Form I-797 (Notice of Action) acknowledging receipt of the petition requesting an extension of stay, which includes the attestation (Form ATT-H2B
- Date USCIS acknowledges in writing receipt of the properly filed attestation (Form ATT-H2B) submitted while the H-2B petition is pending; or
- Start date of employment if the start date of employment indicated in the H-2B petition occurs after the filing.

The H-2B employee's unexpired Form I-94, Arrival/Departure Record, indicating his or her H-2B status, along with the employee's foreign passport, qualify as a Form I-9 List A document.

To complete Section 2, you, the new employer, should enter under List A:

- The unexpired foreign passport information;
- Unexpired Form I-94 information; and
- In the Additional Information field, “60-Day Ext.” and the date you submitted the extension of stay H-2B petition ([Form I-129, Petition for a Nonimmigrant Worker](#)) to USCIS or the date you submitted Form ATT-H2B) if your petition was filed on or after March 1, 2020, and is still pending on May 14, 2020.

If USCIS denies the new petition, or if you withdraw the new petition before the 60-day period expires, USCIS will automatically terminate the H-2B worker’s employment authorization within 15 calendar days of its denial decision or the withdrawal request. You must reverify the employee’s employment authorization in Section 3 by the end of the 60-day period described above or once you receive a decision on the H-2B petition, whichever comes first. If your petition is denied or withdrawn, count 15 days from the date of the denial or withdrawal request for the date the employee’s employment authorization expires.

Employers of H-2B workers continuing employment with the same employer should continue to follow current Form I-9 guidance provided in the [M-274, Handbook for Employers - Section 6.7](#)

For more information see [USCIS H-2B Temporary Non-Agricultural Workers](#) page.

05/15/20

Form I-9 Requirements Flexibility Extended for 30 Days

On March 20, the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) announced flexibility in complying with requirements related to Form I-9, Employment Eligibility Verification, due to COVID-19.

This temporary guidance was set to expire May 19. Because of ongoing precautions related to COVID-19, DHS has [extended this policy](#) for an additional 30 days.

This provision only applies to employers and workplaces that are operating remotely. See the [original news release](#) for more information on how to obtain, remotely inspect, and retain copies of the identity and employment eligibility documents to complete Section 2 of Form I-9.

Employers must monitor the [DHS](#) and [ICE](#) websites for additional updates about when the extensions end and normal operations resume.

E-Verify participants who meet the criteria and choose the remote inspection option should continue to follow current guidance and create cases for their new hires within three business days from the date of hire. Please see [COVID-19](#) webpage for more information.

05/13/20

Interim Final Rule Implementing the U.S. Workforce Act of 2018 Publishes Rule creates new requirements for CNMI employers to protect U.S. workers

USCIS published an [interim final rule \(IFR\)](#) May 13 implementing the [Northern Mariana Islands U.S. Workforce Act of 2018](#), which created requirements that encourage employers to hire U.S. workers in the Commonwealth of the Northern Mariana Islands (CNMI) and ensures that U.S. workers will not be displaced or encounter a competitive disadvantage for employment compared to non-U.S. workers.

“In addition to implementing legislation, this rule follows the clear guidance laid out by President Trump’s Buy American and Hire American executive order, which called on the Department of Homeland Security to propose rules to protect the