



DHS Extends Temporary COVID-19 Rule Allowing Certain H-2A Petitioners to Hire Certain Foreign Workers

The Department of Homeland Security (DHS) has temporarily extended some of the provisions of the April 20 [temporary final rule](#). On Aug. 20, DHS published a [new temporary final rule](#) to extend the amendment that allows all H-2A petitioners with a valid temporary labor certification (TLC) to start employing certain foreign workers who are currently in the United States and in valid H-2A status.

The temporary final rule continues to allow non-E-Verify employers with properly filed H-2A extension of stay petitions to hire H-2A workers currently employed by a different company beginning on or after the date USCIS receives the extension of stay petition (as stated on the Form I-797 receipt notice), but no earlier than the start date of employment listed on the H-2A petition. ♦

The temporary rule applies if USCIS receives the new employer's extension of stay H-2A petition on or after Aug. 19, 2020, and no later than Dec. 17, 2020.

Under this temporary final rule, you, the **new, non-E-Verify employer** may employ the H-2A worker while the extension petition is pending, for a period not to exceed 45 days starting from the date of the receipt notice, or until USCIS denies your petition or you withdraw the petition, whichever comes first. The H-2A employee's unexpired Form I-94, Arrival/Departure Record indicating their H-2A status, along with their foreign passport, qualify as a Form I-9 List A document.

To complete Section 2, enter the following information under List A:

- The unexpired foreign passport information;
- The unexpired Form I-94 information; and
- ♦45-Day Ext.♦ and the date you submitted Form I-129 to USCIS in the Additional Information field.



If USCIS denies the new petition, or if you withdraw the new petition before the 45-day period expires, USCIS will automatically terminate the H-2A worker's employment authorization 15 calendar days after its denial decision or the withdrawal request.

You must reverify the employee's employment authorization in Section 3 either by the end of the 45-day period from the date USCIS receives your Form I-129 or once you receive a decision on the H-2A 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 If your petition is denied or withdrawn, count 15 days from the date of the denial or withdrawal request for the date the employee's employment authorization expires.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-2A workers continuing employment with the same employer or with a new employer that is enrolled in E-Verify should continue to follow current Form I-9 guidance provided in the [Handbook for Employers ♦ Section 6.6.♦](#)

DHS is **not extending** the temporary exception that allows an H-2A worker's period of stay to be extended beyond the three-year limitation, without first requiring them to remain outside of the United States for an uninterrupted period of three months.

For more information see [USCIS H-2A temporary agricultural workers page](#).

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