

Blog Post

Use of Form I-765 Approval Notices for I-9 Verification Due to COVID-19

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By [Rachel L. Perez](#)

Employers who accept certain Form I-765 Approval Notices specifically approved during the pandemic for I-9 documentation purposes must reverify the employees presenting such documents no later than December 1, 2020. Delays in production of Employment Authorization Documents (EADs) due to the COVID-19 pandemic have forced some foreign national workers to experience a lapse in employment authorization or to postpone employment altogether. Accordingly, on August 19, 2020, the U.S. Citizenship and Immigration Services (USCIS) temporarily expanded the List of Acceptable Documents for Form I-9 to assist employers who have been impacted by EAD production delays. Due to COVID-19, for a limited time, employers can accept a Form I-765 Approval Notice (also known as Form I-797, *Notice of Action*) with a **Notice date on or after December 1, 2019 through and including August 20, 2020**, for Form I-9 employment eligibility verification purposes in lieu of an EAD Card (also known as Form I-766).

Although the Form I-765 Approval Notice states that it is not evidence of employment authorization, the USCIS policy creates a limited exception whereby employers may treat the Form I-765 Approval Notice as a Form I-9, List C #7 document issued by the Department of Homeland Security that establishes employment eligibility. Employees may present a

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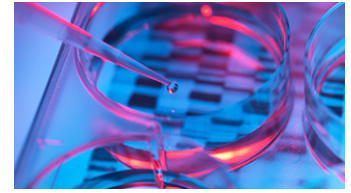
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Form I-797, *Notice of Action* showing approval of their Form I-765, *Application for Employment Authorization*, with a Notice date during the above time-frame to satisfy I-9 documentation requirements until December 1, 2020.

If presented with an acceptable Form I-765 Approval Notice, employers are alerted that the Form I-765 Approval Notice neither serves as a List A document establishing both identity and employment authorization, nor a List B document establishing identity. Employers must ensure that new hires who present a Form I-765 Approval Notice as a List C document also present an acceptable List B identity document during the onboarding process. Current employees who require reverification can present the Form I-765 Approval Notice as a List C document that establishes employment authorization. By December 1, 2020, these employees will need to present employers with new evidence of employment authorization from either List A or List C. Employers are reminded that they must allow the employee to choose whether to present their new EADs as a List A document, or a different document from either List A or List C.

Employers are encouraged to maintain a list of all new and current employees who present a Form I-765 Approval Notice as List C document under the temporary USCIS policy should a government worksite inspection occur. Due to current working conditions under COVID-19 restrictions and the potential reduction in USCIS personnel, employers should monitor changes to employment eligibility verification policies by keeping in close contact with an immigration attorney who specializes in worksite enforcement.

If you have questions or concerns about compliance with Form I-9 requirements, contact your Akerman lawyer.

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