FROM THE OFFICES OF

GOVERNOR MAURA T. HEALEY
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Executive Office of Health and Human Services, Executive Office of Labor and Workforce Development, Office for Refugees and Immigrants, and Office of the Attorney General

Guidance for Employers Regarding Immigration and Work Authorization

The information contained in this document is provided for informational purposes only and should not be construed as legal advice. For legal advice, employers should contact qualified immigration or employment counsel.

General Guidance for Employers

Employers should understand that they need to be careful to navigate between two legal obligations:

1. Avoiding the employment of unauthorized workers, and
2. Avoiding discrimination, including discrimination based on national origin or citizenship status.

Employers cannot assume an employee or prospective employee is ineligible to work because, for instance, the employee/prospective employee is not from the United States, is from a particular country, has an accent, etc. In particular, employers should be careful not to assume that someone is unauthorized to work solely because they are dealing with immigration issues or have a temporary status, particularly when those matters are unresolved or subject to ongoing legal review.

Under the Immigration Reform and Control Act of 1986 (IRCA), it is unlawful for an employer to knowingly hire or continue to employ a person who is unauthorized to work in the United States. All employers must complete Form I-9, Employment Eligibility Verification, for each employee to document identity and work authorization. If an employee's work authorization is time-limited, employers must also reverify an employee's employment authorization before the expiration date. *See* 6.1 Reverifying Employment Authorization for Current Employees | USCIS

At the same time, the Immigration and Nationality Act (INA) prohibits discrimination in hiring, firing, or recruitment based on national origin or citizenship status. *See* 8 U.S.C. § 1324b; 28 CFR Part 44. (There are some limited exceptions where required by law, regulation, or government contract.) Massachusetts law also provides additional protections against national origin and ancestry discrimination in employment under G.L. c. 151B, which applies to most public and private employers in the Commonwealth.

Termination of an employee because they may lose employment authorization in the future can be considered discrimination and generally should not occur. For employees on a temporary status, employers should explore and accept alternative work authorization grounds from alternative work statutes or provisions of law.

To ensure compliance with these overlapping obligations, employers should consult with an attorney to obtain advice regarding work authorization verification practices.

For more information on an employer's responsibilities to verify work authorization, please see USCIS: Handbook for Employers.

For more information on immigrant and employee civil rights protections, please see the USCIS: Handbook for Employers, and the US DOJ website: IER Section.

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I-9 Audits

Employers should be aware of the increased possibility that federal officials may demand to inspect (or "audit") their I-9s. Officials from the Department of Homeland Security, including Immigration and Customs Enforcement (ICE), the Department of Justice, and the Department of Labor have this authority. *See* Statutes and Regulations | USCIS. These officials should issue a written Notice of Inspection (NOI) at least 3 days before the inspection, though they may obtain I-9 forms without providing that notice if they have a subpoena or warrant.

Employers who receive an NOI, subpoena, or warrant for I-9 records should immediately contact attorneys who specialize in Immigration law. (*See* resources below). Legal counsel can help employers prepare documents, correct errors, and seek extensions.

A few additional points to understand are:

- The Immigration Reform and Control Act (IRCA) requires all employers to verify identity and employment eligibility for all hires, within three days of hire.
- Employers must verify employees' I-9 documents in person unless they enroll in E-verify.
- Employers are subject to fines and other potential penalties (including criminal penalties) if they do not comply with I-9 rules.

USCIS Key resources for I-9 compliance:

- Completing Supplement B, Reverification and Rehires (formerly Section 3) | USCIS
- Form I-9 Resources | USCIS
- Questions and Answers | USCIS
- Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 AuditsGuidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits

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Temporary Protected Status (TPS) & Work Authorization

Please note: TPS terminations are currently being litigated in multiple courts throughout the country. Due to ongoing federal court litigation, this status update could change and the validity of employment authorization documents may shift as courts issue new rulings. Employers are strongly encouraged to seek out legal counsel specializing in immigration-related employment questions before taking any actions based on an employee's TPS status.

TPS for Haiti:

DHS issued a notice terminating TPS for Haiti, as of September 2, 2025. Employment authorization documents issued with an August 3, 2025, expiration date are automatically extended through February 3, 2026. See USCIS: TPS Haiti.

This is because a Federal District Court judge ruled that TPS for Haitians remains in effect past the Trump Administration's termination date of September 2, 2025, until February 3, 2026. *See Haitian Evangelical Clergy Association, et al. v. Trump, et al.* (E.D.N.Y.) (Case 1:25-cv-01464-BMC). This, and other litigation on this topic, is ongoing. Employers should check the USCIS website for updates on the litigation.

TPS for Venezuela:

Venezuelans may have TPS and associated work authorization cards (EAD) or I-797 "notice of action" receipts that authorized them to work through various dates including April 2025, September 10, 2025, and October 2, 2026.

The date your employees' documents are now set to expire defines their validity (unless and until a court rules otherwise):

> **April 2025**. Employees with an expiration date in April 2025 on their EAD or I-797 notice of action cannot continue to work as of the issuance of this guidance, unless ongoing litigation revives their claim for work authorization or they have an alternative status. However, as stated above, the employee may still be authorized to work based on another status or provision of law and may provide other acceptable Form I-9 documentation to demonstrate employment authorization.
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> **September 10, 2025**: DHS has not yet terminated or changed these work authorization documents, and the courts have not yet litigated this issue. This means that, as of the issuance of this guidance, employees with an expiration date of September 10, 2025 on their EAD card or I-797 notice of action can continue working through that date.

October 2, 2026: Those employees who received their EADs by February 5, 2025, with an expiration date of October 2, 2026, on their EAD card or an I-797 notice of action will retain EAD validity while litigation continues.

Please note: Litigation related to Venezuelan TPS is ongoing, including as to the validity of work authorizations. *See National TPS Alliance, et al. v. Noem, et al.* (N.D. Cal.) (Case 3:25-cv-1766). In this evolving landscape, it is important to understand your employee's unique circumstances prior to acting.

TPS for other Countries:

TPS has also been revoked for **Afghanistan, Cameroon, Nicaragua, Nepal, and Honduras**. At least one court has recently postponed the termination for Honduras, Nepal and Nicaragua. Each has various termination dates and potential litigation to expand those dates.

Specific Information Regarding CHNV or CBP-1 App Parolees

Employers may also have employees with work authorization based upon their "parole" status, which is code C11 on the EAD card. It is important to know there are different types of "parole" status. The current administration has attempted to revoke certain types of parole—such as Cuban, Haitian, Nicaraguan, and Venezuelan parole (CHNV) or CBP-1 App parole—along with any work authorization based on that parole. Importantly, the legal effect of these actions depends on the type of parole each employee has. The legal status of these parole revocations is in active litigation.

Due to the complexities surrounding this type of parole revocation and ongoing litigation, employers should be careful about making any reverification decisions about parolees. Some parolees, and their associated work authorization, may remain valid, such as humanitarian parole. CHNV parolees have had their parole revoked, but a court action continues to challenge the revocation.

In general, employers seeking answers about whether to reverify an employee with parole must not make assumptions about revocation and should seek legal counsel.

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Final Note & RESOURCES

In this evolving legal landscape, employers generally should:

- Maintain consistent and non-discriminatory I-9 practices;
- Avoid assumptions based on nationality or immigration status;
- Monitor USCIS information and updates about ongoing litigation; and
- Seek legal counsel about reverification or employment decisions based on TPS or parole-based work authorization.

The following legal directories may be helpful in finding a lawyer that specializes in business immigration law:

The American Immigration Lawyers Association has a drop-down menu for lawyers that specialize in business immigration

Boston Bar Association Lawyer Referral Service
Massachusetts Bar Association's Lawyer Referral Service

For more information about the Commonwealth's efforts, please visit mass.gov/community-resource-toolkit or contact the Office for Refugees and Immigrants at ori.inbox@mass.gov.