FROM THE OFFICES OF

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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 (Revised – September 2026)

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. Except as required by federal law, employers are now required to notify employees in writing no later than 48 hours after receiving an NOI. *See* Stat. 2026, c. 163, § 8 (PROTECT Act). Please see the sample notice linked here: Guidance for Employers on New State Law Notice Requirement for I-9 Inspections.

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
- I-9, Employment Eligibility Verification | USCIS
- Questions and Answers | USCIS

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Temporary Protected Status (TPS) & Work Authorization

Please note: TPS terminations are currently being litigated in multiple courts throughout the country, though the Supreme Court's decision in *Mullin v. Doe*, 609 U.S. __, 146 S.Ct. 2121 (2026), will likely negatively affect those lawsuits. Due to ongoing federal court litigation, this status update may 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.

Employers are also reminded that an employee on TPS 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. Employers should consult with impacted employees to determine whether providing a period of unpaid leave would be helpful, to give the employee an opportunity to pursue an alternative status after a TPS designation is officially terminated. Employees separated due to the expiration or termination of their work authorization are entitled to any benefits, including payment of unused vacation leave, they would receive if separated for another reason.

TPS for Haiti:

Following the Supreme Court's decision in *Mullin v. Doe*, the Trump Administration's termination of TPS for Haiti went into effect, effective August 5, 2026. See *Mullin v. Doe*, No. 25-1083 (June 25, 2026); Order, *Miot v. Doe*, No. 25-cv-02471 (D.D.C. Aug. 5, 2026). This means that the protections and benefits of TPS for Haitians have ended, and former TPS holders are only authorized to work if they have an alternate employment authorization.

TPS for Venezuela:

- DHS has acted to terminate Venezuelan TPS for both the 2021 and 2023 designations. Whether or not a Venezuelan TPS holder can continue to work based on TPS-associated work authorization depends on the date on their work authorization cards (EAD) or I-797 "notice of action" receipts. See USCIS: TPS Venezuela. Employees with an expiration date in **April 2025** or **September 10, 2025** on their EAD or I-797 notice of action cannot continue to work, unless ongoing litigation revives their claim for work authorization or they have an alternative status.

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

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TPS for El Salvador:

TPS for El Salvador was previously set to expire on September 9, 2026. However, on September 9, 2026, DHS paused that termination, posting online:

> An announcement on El Salvador's TPS will be made at the appropriate time. Until such announcement is made, Salvadoran individuals present in the U.S. under TPS retain protection including work authorization.

Temporary Protected Status Designated Country: El Salvador | USCIS.

Therefore, until DHS takes further action terminating or extending TPS for El Salvador, Salvadoran TPS status holders are still protected, including maintaining work authorization. If DHS terminates TPS for El Salvador, the termination would not go into effect for at least 60 days from the date of notice of the termination.

For more information, you may wish to consult an attorney and these resources

- USCIS Update to TPS Page on EAD Automatic Extensions
- National TPS Alliance Status of Employment Authorization for El Salvadoran TPS Holders

TPS for other Countries:

TPS has been terminated for **Afghanistan, Cameroon, Honduras, Nepal,** and **Nicaragua, Somalia, Sudan, and Syria (as well as other Countries).** While litigation seeks to extend TPS for certain countries, the Supreme Court's decision in *Mullin v. Doe* will likely negatively affect litigation around the termination of TPS. Individuals should refer to the USCIS website regarding TPS for final termination dates. See USCIS website.

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 taken steps 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, including a recent case in the District of Massachusetts preserving parole status for CBP-1 App entrants. See *Doe v. U.S. Dept of Homeland Security*, Case 1:25-cv-12245-ADB, D. Mass.

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.

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

Other Immigration Work Authorized Statuses

In addition to the statuses described above, USCIS provides work authorization to potential employees such as asylees, refugees, recipients of deferred action and those applying to adjust their status to lawful permanent residence. Each of these temporary statuses has specific rules that allow for work, sometimes without requiring a work authorization card (e.g. refugees are authorized to work "incident to status" and can prove that eligibility through various documents other than an EAD card). When an employee indicates they are authorized to work but have an expired EAD card or another document purporting to show authorization to work, employers should consult the USCIS website to verify the employee's eligibility to work. See USCIS: Acceptable Receipts.

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.

Employers who wish to post a notice about upcoming I-9 audits may use this template:

- Mass Legal Services Template I-9 Notice

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