

PUBLICATION

More Flexibility in I-9 Work Authorization Confirmation Process

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USCIS is temporarily allowing the acceptance of an approval notice for I-765 employment authorization document application, and ICE is continuing to allow remote verification for employers still operating remotely.

USCIS has fallen behind in producing I-766 employment authorization documents once it approved an I-765 application under a wide range of employment categories. Grantees lacking their cards as evidence of identity and employment eligibility brought a lawsuit against USCIS to require swift production or a practical work around. In settlement of the lawsuit, USCIS [announced](#) that employees may present, and thus employers must accept, an approval notice for Form I-765 as a List C document of employment eligibility as long as the worker also presents an unexpired List B document of identity, such as a driver's license. This applies to approval notices issued from December 21, 2019 to August 20, 2020, and the employer is not required to revalidate until December 1, 2020. Of course, it makes sense for a worker to present the actual I-766 work card once received from USCIS to update the I-9, but an employer must wait until December 1 to demand it, and the employee could choose to present some other qualifying combination of documents.

Meanwhile, [ICE has extended for another month](#) – until September 17, 2020 – its temporary policy allowing employers to use a remote process for I-9 verification for new employees if the employer continues to operate remotely. This policy applies less broadly than some employees think, and using it requires some technical attention to guidance ICE has issued.

If you have any questions, please contact [Robert Divine](#) or any member of Baker Donelson's [Immigration Team](#).