CLIENT ALERTS & INSIGHTS

Non-Immigrant Employees with Expiring Employment Authorization Documents Get a Lifeline from DHS

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The Department of Homeland Security announced that, effective May 4, 2022, the government was temporarily extending the automatic extension period for certain I-765 Employment Authorization Documents (EADs).

Currently, eligible employees in certain categories who timely filed to renew their EADs before they expired could continue to work with their I-797 Receipt Notice for 180-days beyond the expiration date on their EADs, while waiting for their approval notices or new cards to arrive. But, with the current backlog in processing times for EAD renewals, DHS has extended this "automatic renewal" period beyond 180-days.

In fact, the automatic-renewal period has been extended for an additional 360 days, for a total of 540 days. To qualify for this longer automatic extension, employees would have had to have timely applied to renew their EADs. However, even if an employee's EAD had already expired, the validity of their EAD will automatically resume beginning on May 4, 2022.

Not all categories of employees who have EADs qualify for this extension. Employees and employers can access the announcement, which includes the list of eligible categories, at https://www.uscis.gov/eadautoextend. For instance, some of the most common categories that are eligible are Refugees, Asylees, individuals with a pending adjustment of status under section 245, and those with TPS or temporary protected status.

Employers should update Form I-9s for employees with these automatic extensions. An eligible employee's form I-797, Notice of Action, when combined with the EAD, is acceptable evidence of an extension up to 540 days. For current employees, an employer would update the Additional Information field in Section 2 with the appropriate expiration date and enter "EAD EXT." Employers also should keep a copy of the USCIS webpage announcement attached to the Form I-9. For re-hired employees, the appropriate automatic extension date should be noted in Section 3 of the Form I-9.

Finally, new employee hires who present with an expired EAD, and a I-797 Receipt Notice, should not automatically be denied employment or asked to present different or alternative documentation establishing employment eligibility. Instead, employers should check to ensure that the employee is in a category eligible for the 540 extension and that the "Received Date" on the I-797 is prior to the expiration date on the EAD.

For more information, please contact a member of Benesch's Labor & Employment Practice Group.

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