



Expiring Work Authorization: Do Employers Have to Say Goodbye?

Insights

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As a rule, if an employee in the United States is unable to produce a valid, unexpired work authorization document to complete the Form I-9 process (for a new hire) or by the date that his or her prior authorization is due to expire (for a current employee), you cannot continue the employment. But what do you do if the employee announces that he or she has Temporary Protected Status (TPS) work authorization and cannot produce an unexpired employment authorization card? What is TPS? Can you allow this employee to work and for how long? The answer is “Yes” if the employee is from a TPS-designated country and for which an automatic extension of employment authorization has been granted.

TPS work authorization is granted to individuals from countries that DHS has determined have conditions preventing their nationals from safely returning home (e.g. civil war or environmental disaster). Currently, El Salvador, Haiti, Honduras, Nicaragua, Somalia, Sudan, and South Sudan have TPS designation and citizens of those countries are eligible for work authorization with varying country-specific end dates. Often, DHS will re-designate TPS through a particular date and also grant an automatic extension of work authorization through a shorter date to allow continued work while the individual waits for issuance of his or her new EAD. For example, TPS EADs for nationals of El Salvador expired on March 9, 2012. DHS re-designated TPS for El Salvador through September 9, 2013 and granted an auto-extension of work authorization through September 9, 2012. An employee from El Salvador with TPS work authorization is allowed to continue working until September 9, 2012 without presenting an unexpired EAD. For a list of current TPS countries, expiration dates, and automatic EAD extension dates, visit the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/tps.

To ensure compliance with Form I-9 requirements, for a new employee, you may accept an expired EAD that has been auto-extended if the category listed on the card is either “A-12” or “C-19” and the expiration date corresponds with the last re-registration date indicated on the USCIS website. Do not ask for proof that the employee is a national of the TPS country. For an existing employee, update Sections 1 and 2 of the Form I-9 on file by drawing through the expiration dates listed, write the new auto-extension date above the prior dates, and write “TPS Ext.” in the margins of both sections. Have the employee initial and date the change in Section 1. You will initial and date the change in Section 2. Set a reminder to re-verify the auto-extended EAD when it is due to expire. At the end of the auto-extension period, the TPS employee must present his new EAD. As long as DHS continues to re-

designate TPS for your employee's country, he or she will continue to be employment-authorized. You can to continue to employ him or her (either under the auto-extension option or with his or her new EAD card) but remember to rev-verify his or her Form I-9 each time.