



Form I-9 Guidance for H-2B Workers Seeking to Change Employers

On Jan. 28, the Department of Homeland Security and the Department of Labor published a joint [temporary final rule \(87 FR 4722\)](#) in the Federal Register to increase the numerical limits on FY2022 H-2B nonimmigrant visas and temporarily provide portability flexibility for H-2B workers already in the U.S. to begin work immediately with a new employer after an H-2B petition (supported by a valid temporary labor certification (TLC)) is received by USCIS and before it is approved.

Under this temporary final rule, portability applies if:

The new employer's extension of stay H-2B petition is pending on Jan. 28: The new employer may employ the H-2B worker while the extension of stay petition is pending, for a period not to exceed 60 days, beginning on the employment start date on the petition or Jan. 28 whichever date is later.

Or

USCIS receives the H-2B petition during the period Jan. 28 – Jul. 27, 2022: The H-2B worker is authorized to begin employment with the new employer for a period not to exceed 60 days beginning on the Received Date on Form I-797 (Notice of Action) acknowledging receipt of the petition requesting an extension of stay or if the start date occurs after the I-797 Received Date, for a period up to 60 days beginning on the employment start date on the petition.

Note: The H-2B employee's unexpired Form I-94, Arrival/Departure Record, indicating his or her H-2B status, along with the employee's foreign passport, qualify as a Form I-9 List A document.

To complete Section 2, the new employer should enter under List A:

- The unexpired foreign passport information;
- Unexpired Form I-94 information; and
- In the Additional Information field, "60-Day Ext." and the date you submitted the extension of stay H-2B petition ([Form I-129, Petition for a Nonimmigrant Worker](#)) to USCIS.

If USCIS denies the new petition, or if you withdraw the new petition before the 60-day period expires, USCIS will automatically terminate the H-2B worker's employment authorization 15 calendar days after the denial decision or the date the new petition is withdrawn.

You must reverify the employee's employment authorization in Section 3 by the end of the 60-day period described above or once you receive a decision on the H-2B petition, whichever comes first. If your petition is denied or withdrawn, count 15 days from the date of the denial or withdrawal request for the date the employee's employment authorization expires.

Employers of H-2B workers continuing employment with the same employer should continue to follow current Form I-9 guidance provided in the [Handbook for Employers - Section 6.7](#).

For more information see [USCIS H-2B Temporary Non-Agricultural Workers](#) page.