

Employee Benefit ■ Plan Review

House and Senate Joint Resolution and the Potential Elimination of the 540-Day Automatic Extension of Employment Authorization

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A House and Senate Joint Resolution – H.J.Res. 23 and S.J.Res. 8 – if passed by the 119th Congress and signed into law by President Trump, could impact both employers and foreign national employees in the United States.

Simply put, the joint resolution seeks to overturn President Biden’s rule that currently grants from a 180-day to a 540-day automatic extension of employment authorization documents (EADs) available to certain eligible foreign national applicants.

BACKGROUND

Foreign national employees must be legally authorized to work in the United States. There are many ways in which a foreign national employee can show documentary evidence of employment authorization. One way the foreign national employee may show evidence that he or she is authorized to work in the United States is through an EAD (also known as a “work permit”) issued by the U.S. Citizenship and Immigration Services (USCIS). A work permit is valid for a specific period of time (most commonly 1-4 years depending on the program under which the foreign national was able to apply for and obtain that work permit).¹ Obtaining an EAD

or work permit in the United States for the first time, or renewing one, can take a long time, anywhere from 90-365 days, and in some circumstances even more. The renewal process cannot only be fraught with problems (i.e., difficulty determining the accuracy of government filing fees, improper rejections by USCIS, changes in rules, etc.), but also faces extreme backlogs.

Anecdotal reports tell extraordinary accounts of individuals receiving their green cards before receiving their EADs (getting the green cards renders the EAD useless, but also forcing individuals to wait long periods of time to be employment authorized as mandated by law). There are cases in which the initial work permit often expires before the renewal is approved, even when the EAD renewal application was submitted 6 months in advance, which is the maximum period in which an EAD renewal can be applied for.

In the past, the government granted a 180-day automatic extension for the renewal work permits to be processed, meaning that the employee can work for 180 days while he or she is waiting for their work permit renewal. Unfortunately, 180 days is often not enough time, as USCIS often takes over six months or more to process. For example, asylum seeker

employment applications have 11-12 months of waiting time. Because of this, the Biden administration expanded the 180-day extension period rule to 540 days. The final rule went into effect on January 13, 2025.

Initially, the automatic extension period was set at 180 days. Still, due to increasing processing backlogs and to reduce the burden placed on employers and employees alike, and to avoid potential lapses in employment authorization, the U.S. Department of Homeland Security (USDHS) issued new rules or updates in 2022 and 2024, which increased the extension period of employment authorization from 180 to 540 days.²

The 540-day automatic extension applies to individuals who are eligible for work authorization benefits. To qualify, applicants must file for the renewal of their EAD before the current one expires, maintain the requisites for employment authorization, and apply for an extension in a qualifying eligibility category.³

HOUSE AND SENATE RESOLUTIONS

In January 2025 both chambers of Congress introduced separate joint resolutions under the Congressional Review Act (CRA), attempting to repeal the 540-day extension and returning it to 180 days. Because the resolutions were introduced under the CRA, they only need a majority of votes in each chamber to pass.

Senate rules, however, require the resolution to be addressed within 60 session days – giving until mid-May as a deadline passage deadline, while the House has no deadline. If both chambers pass the resolution, it goes to the president for signature.

Despite assurances that these resolutions are not a priority, the House Judiciary Committee may vote on the resolution any time now. In the Senate, once the resolution has 30 signatures, it can be brought to the floor for an immediate vote.⁴

THE IMPLICATIONS OF RESCISSION FOR EMPLOYERS AND ELIGIBLE FOREIGN NATIONAL EMPLOYEES

If passed, this joint resolution is likely to add an additional strain to the economy and create a great deal of disruption for employers in the United States. Foreign national employees without EADs approved for renewal by the 180-day deadline could be barred from working for no having employment authorization, even when they may have “status” or be “lawfully present” in the United States.

The potential rescission of the 540-day extension could have not only far-reaching implications but also devastating effects. Employers may face gaps in their workforce and lose skilled and unskilled workers if the extension is rescinded while USCIS continues to struggle with backlogs and processing delays. Employers would also encounter challenges in terms of Form I-9 re-verifications, E-Verify checking, and many disruptions as the automatic extensions are suspended.

Employers with foreign national employees in industries such as food services, hospitality, retail bakers, agriculture, healthcare, and others, may experience shortages, potentially impacting their sales, revenue, and profits.

The 540 days increase in automatic employment authorization provides important protection for business owners, allowing them to continue employing their current workers. In fact, millions of foreign national employees have been able to continue producing and contributing to the U.S. economy because of this extension. It is estimated that this 540-days automatic employment authorization extension has saved U.S. employers \$4.0 billion in employment turnover and \$1.5 billion in federal tax revenue.

For U.S. employers, as well as for foreign national employees, remaining employment authorized

through an automatic extension that covers the period it takes to renew the EAD is not only essential, it is critical. The rule covers those who continue to meet eligibility requirements for their EAD category. If rescinded or nullified, these foreign national employees could be forced out of work before their renewals are processed, leading to significant disruptions.

WHAT EMPLOYERS CAN DO TO PREPARE

Employers should be vigilant regarding their I-9 and E-Verify practices:

- Expect an increase in I-9 inspections under the present administration.
- Reverify employees' work authorization at the correct time.
- Conduct internal audits and seek to correct technical and substantive errors and mistakes on I-9s.
- Educate and train HR personnel on I-9 and E-Verify.
- Seek competent counsel.

CONCLUSION

The joint resolution signals potential problems for employers and foreign national workers who rely on the 540-day EAD auto-extension. While it remains uncertain whether the resolution will pass through both chambers of Congress and be signed into law by President Trump, Employers as stakeholders must stay informed and consider advocacy pathways to promote business-friendly policies. A rescission of the 540-day extension will certainly increase current processing delays and lead to workforce disruption. Employers cannot lower their guards and must act with determination in being proactive in requesting Congressional intervention and preparing to ensure, as much as possible, to be compliant in the face of significant changes. 🌐

NOTES

1. Foreign nationals often think that EAD or work permits, in addition to work authorization, provide “status.” EADs or work permits do not provide legal status in the United States, they only provide work authorization.
2. Automatic extension of EADs were implemented originally in 2016 to palliate extended

processing delays of EADs which took in some cases 10-12 months.

3. <https://www.uscis.gov/eadautoextend>.
4. <https://www.congress.gov/bill/119th-congress/senate-joint-resolution/8/all-actions-without-amendments>.

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Number 4, pages 17–18, with permission from Wolters Kluwer, New York, NY,
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