



Are You Compliant with the Form I-9 Requirements?

As you might be aware, the federal government is cracking down on immigration enforcement across all fronts. One of the areas experiencing a drastic increase in enforcement activity is the inspection of an employer's hiring records by the United States Immigration and Customs Enforcement (ICE). ICE's Homeland Security Investigations unit (HSI) delivered more than 5,200 Notices of Inspection (NOI), opened 3,510 worksite investigations, and conducted 2,282 employer audits between October 1, 2017 (the beginning of the fiscal year) and May 4, 2018 – which represents a nearly 60 percent increase from 2016/2017 when the agency only conducted 1,360 investigations.

If you are lucky enough to receive a NOI, you will have *three days* to prepare for the inspection and provide the requested I-9s and other supporting documentation to ICE for inspection. Often, ICE will request the employer provide supporting documentation, which may include a copy of the payroll, list of current employees, Articles of Incorporation, and business licenses. ICE agents or auditors will then conduct an inspection of your documentation for compliance.

Monetary penalties for knowingly hire and continuing to employ violations range from \$375 to \$16,000 per violation, with repeat offenders receiving penalties, at the higher end. Penalties for substantive violations, which includes failing to produce a Form I-9, range from \$110 to \$1,100 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations.

With those penalties in mind, it might be time to conduct your own internal review of your Form I-9 compliance, or speak with an experienced immigration attorney or advisor to help you with the process. In the meantime, here are some helpful tips and information related to the Form I-9:

What is Form I-9?

Form I-9 used to establish both identity and employment authorization for individuals (citizens and non-citizens) hired for employment in the United States. All employers must accurately complete and retain Form I-9, the employment eligibility verification form, for every person hired for employment on or after November 6, 1986, in the United States. The form can be completed electronically or on paper.

Form I-9 Tips

It is critical to follow the instructions for filling out Form I-9 completely and on-time to be compliant with government regulations.

Form reminders:

- New employees must provide **ONE** document from List A or **ONE** document from List B and **ONE** from List C.
- All employees must complete Section 1 no later than the first business day of employment.
- In Section 1, employees must check the first box if they **DON'T** use a preparer or translator (P/T) to fill out the form. If the first box is checked, no entries can be made in the fields as the checkbox is equivalent to stating N/A.
- If the employee uses a P/T, the P/T must check the second box in this section, then choose from the drop-down menu the number of preparers and translators.
- Section 2 of the I-9 must be completed by the employer no later than three business days after the employee begins work for pay.
- The employer must examine original documents provided by the employee and make sure they are not expired.
- Form I-9 must be retained for: 3 YEARS AFTER the date an employer hires an employee or 1 YEAR AFTER the date the employee's employment is terminated, whichever is later.

Please remember, this article is just meant to identify some of the common mistakes and risks that could be associated with an inadequate Form I-9 compliance program and is not meant to constitute legal advice. Please speak with an experienced immigration attorney or knowledgeable advisor if you have questions about this topic.