

ICE Reclassifies Common Form I-9 Errors as Substantive Violations

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For the first time in more than 10 years, U.S. Immigration and Customs Enforcement (ICE) has updated its Form I-9 inspection guidance on “technical” and “substantive” violations by publishing a [Fact Sheet](#) indicating that many errors that were previously treated as *technical*, *i.e.*, curable within a 10-business-day window in the event of an audit, will now be categorized as *substantive* violations subject to immediate penalty without the opportunity to correct them.

More Errors Now Count as Substantive Violations

ICE now treats a range of common, previously “technical” mistakes as substantive, including:

- **Employee information in Section 1**
 - Missing or incomplete legal name
 - Missing date of birth
 - Failure to check one box attesting to immigration status in U.S. and any additionally required information (*e.g.*, alien registration number, Form I-94 admission, foreign passport number)
 - Failure to sign/date Section 1
- **Employer information in Section 2 and Supplement B**
 - Failure to verify proper documentation that establishes identification and authorization to work in U.S. within three business days following date of hire (including follow-up verification of receipts)
 - Missing required information under the identity and work authorization documents
 - Missing date of hire or rehire
 - Missing employer/authorized representative’s complete name and title
 - Missing signature or date in the Certification
- **Preparer/Translator Certification for Section 1**
 - Missing full name, address, signature, or date for preparers/translators in Supplement A
- **Remote Inspection/Alternative Procedure**
 - Failure to check appropriate box for using alternative procedure (remote/virtual inspection of documents)
 - Failure to be an E-Verify participant when using alternative procedure
- **Electronic I-9 Systems**
 - Noncompliance with requirements for electronic completion, retention, documentation, security, reproduction, and/or signature (*e.g.*, inadequate audit trail, security, or e-signature functionality)
- **Overall Completion Requirements**
 - Failure to prepare the Form I-9/missing Form I-9
 - Failure to present the Form I-9 within three days of receiving the Notice of Inspection from the federal government
 - Failure to timely complete Section 1 and/or Section 2
- **Spanish Language Form**

- Using the Spanish language Form I-9 (acceptable only for employers and employees in Puerto Rico)

Narrowed “Technical” Violations Category

While some issues remain “technical” and may be corrected within 10 business days of ICE notice, the range of errors that qualify for this cure period is much narrower.

- **Employee information in Section 1**
 - Failure to use the current edition of the I-9
 - Failure to provide other last names used or physical address
 - Failure to ensure the Social Security number is correct when employer is enrolled in E-Verify
- **Employer information in Section 2**
 - Missing employee’s complete name at the top of page 2 (applicable in some older editions of the form)
 - Missing employer’s name or physical address
- **Supplement A**
 - Failure to write employee’s full name at the top of Supplement A
- **Supplement B**
 - Failure to record employee’s full name at the top of Supplement B
 - Failure to record employee’s new name (if applicable) as appropriate

Elimination of the Document Photocopy Safe Harbor. ICE has limited prior leniency where failure to enter required information about the identity and work authorization documents (such as title of document, issuing authority, document number, expiration date) was curable if employer kept a legible photocopy of the document(s). Under the new guidance, omissions in these fields may be treated as substantive violations even if copies of the documents are on file.

Significance and Implications for Employers

While ICE’s Fact Sheet provides much-awaited clarity in many respects, the extended list of substantive violations signifies critical implications for employers.

1. Increased Penalty Exposure

- **More violations per I-9:** Because more violations are now categorized as substantive, a higher percentage of an employer’s I-9s may contain one or more substantive violations.
- **Higher fine tiers:** ICE penalty ranges are tied to the percentage of I-9s with substantive errors. As that percentage increases, employers move into higher fine tiers, leading to increased aggregate exposure.
- **Aggregate risk:** For employers with large workforces or high turnovers, relatively common process errors can translate into significant six- or seven-figure liabilities in an audit.

2. Reduced Ability to “Fix It Later”

- Now, fewer errors can be cured within the 10-business-day window, and employers can no longer rely on post-hoc cleanup during an audit to mitigate the majority of errors.

3. Heightened Scrutiny of Remote and Electronic Processes

- **Remote verification:** ICE is scrutinizing compliance with DHS's alternative procedure and the underlying E-Verify requirements. Missteps in documenting remote inspections can now count as substantive violations.
- **Electronic I-9 platforms:** ICE is explicitly treating failures of electronic systems to meet regulatory standards as substantive violations, which puts vendor selection, system configuration, and audit trail functionality directly in the enforcement spotlight.

4. Greater Risk in Complex Work Authorization Scenarios

- Shifting rules around Temporary Protected Status (TPS), automatic EAD extensions, humanitarian parole, and other categories create gray areas for reverification and continued employment.
- Decisions made in real time about whether and how to reverify may be second-guessed by ICE, with increased consequences given the narrowed room for error.

Best Practices for Employers

In light of the changes implemented by ICE, employers should consider the following best practices.

1. Elevate I-9 Compliance as a Core Risk Management Priority

- Treat Form I-9 compliance as an enterprise-level risk, not solely an HR or “immigration” issue. Ensure that senior leadership, compliance, and internal audit teams understand the expanded enforcement risk and support remediation efforts.

2. Conduct Internal I-9 Audits

- Work with counsel to conduct internal audits to:
 - Identify and correct errors that remain technically curable.
 - Quantify the current error rate and potential exposure.
 - Develop a prioritized remediation plan (e.g., high-risk locations, employee groups, time periods).
- Also conduct review of the I-9 procedure — who completes the forms, what training do they receive, how are remote hires and rehires handled, how are electronic systems used, etc.

3. Strengthen Training and Standardize Procedures

- Provide targeted training for HR, recruiters, hiring managers, and any staff who complete or reverify I-9s, focusing on:
 - Timing requirements (Section 1 on or before day 1, Section 2 within three business days after first day of work for pay).
 - Errors that are now treated as substantive violations.
 - Proper use and documentation of the alternative procedure and in-person inspection.
- Use standardized checklists for onboarding and reverification to promote consistency.

4. Review Electronic I-9 Systems

- Confirm that electronic I-9 platforms and e-signature tools comply with regulatory requirements. For example, review:
 - How the system records and captures dates and signatures.
 - Whether audit trails are comprehensive and exportable.

- How corrections, reverifications, and rehires are captured.
- Document due diligence and vendor oversight; system deficiencies may now be treated as substantive violations during an ICE inspection.

5. Prepare for Potential I-9 Audits

- Designate an internal I-9/ICE response team (HR, Legal, Compliance) and establish a response protocol.
- Centralize I-9 storage (physical or electronic) and ensure records are complete, organized, and readily retrievable.
- Maintain documentation of good-faith efforts (policies, training materials, audit reports, remediation actions), which can be important in penalty negotiations.

With the anticipated uptick in workplace enforcement efforts, it has become more critical than ever to proactively review and address Form I-9 compliance issues. Involve experienced counsel when addressing high-risk areas, such as when implementing or revising I-9 policies, handling complex work authorization or reverification issues (e.g., TPS, DACA, parolees, automatic EAD extensions, layoffs, rehires), and responding to ICE audits, Notices of Inspection, or proposed fine assessments.

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