

The Immigration Enforcement Storm: I-9 Audit Readiness and Worksite Compliance

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KEY POINTS

- ICE updated its Form I-9 inspection guidance for the first time in more than a decade, reclassifying a wide range of previously curable technical errors — including missing signatures, incomplete document information, and electronic system deficiencies — as substantive violations subject to immediate fines.
- The document photocopy safe harbor has been eliminated: employers who previously relied on maintaining photocopies of identity and work authorization documents to cure Section 2 omissions can no longer do so.
- Employers with large workforces or high turnover face the most significant exposure, as a greater number of Forms I-9 with substantive violations pushes employers into higher penalty tiers and can result in six- or seven-figure aggregate liability from a single audit.
- Employers should conduct an internal I-9 audit now, before any notice of inspection, to identify errors, assess potential fine exposure, and develop a prioritized remediation plan.
- Documentation of good-faith compliance efforts — policies, training materials, internal audit reports, and remediation actions — can be critical in penalty negotiations if an ICE inspection occurs.

The regulatory landscape governing employment eligibility verification has shifted dramatically. For the first time in more than a decade, U.S. Immigration and Customs Enforcement (ICE) has updated its Form I-9 inspection guidance, reclassifying a wide range of technical errors that were previously considered minor — and curable — as serious, punishable violations. At the same time, worksite enforcement activity is on the rise, with ICE conducting worksite compliance investigations at an increasing pace.

For employers, the message is clear: I-9 compliance is no longer a back-burner HR task or niche concern. It is an enterprise-level legal and financial risk requiring proactive attention and robust internal processes.

(1) WHAT CHANGED AND WHY IT MATTERS — THE RECLASSIFICATION OF FORM I-9 VIOLATIONS

Technical vs. Substantive Violations

Under longstanding ICE enforcement policy, I-9 errors fell into one of two categories: technical violations, which were minor paperwork errors that could be corrected within a 10-business-day window to avoid a fine; and substantive violations, which were the more serious errors that triggered immediate penalties with no opportunity for correction.

ICE's recent [Fact Sheet](#) fundamentally reshapes this framework. Many errors that were considered technical are now considered substantive, meaning that upon inspection they immediately trigger fines.

What Is Now a Substantive Violation?

Employee Information in Section 1:

- Missing or incomplete legal name.
- Missing date of birth.
- Failure to check the appropriate immigration status box and provide any additionally required information (e.g., alien registration number, Form I-94, or foreign passport number).
- Failure to sign or date Section 1.

Employer Information in Section 2 and Supplement B:

- Failure to verify proper documentation establishing identity and work authorization within three business days following the date of hire.
- Missing required information about identity and work authorization documents.
- Missing date of hire or rehire.
- Missing employer's or authorized representative's complete name and title.
- Missing signature or date in the certification.

Preparer/Translator Certification, Supplement A:

- Missing full name, address, signature, or date for any preparer or translator.

Remote Inspection and Alternative Procedure:

- Failure to check the appropriate box when using the alternative (remote/virtual) document inspection procedure.
- Failure to be enrolled in E-Verify when using the alternative procedure.

Electronic I-9 Systems:

- Noncompliance with requirements for electronic completion, retention, documentation, security, reproduction, and/or e-signature (e.g., inadequate audit trail, security controls, or e-signature functionality).

Overall Completion Requirements:

- Failure to prepare a Form I-9/missing Form I-9.
- Failure to present Form I-9 within three business days of receiving a Notice of Inspection (NOI) from the federal government.
- Failure to timely complete Section 1 and/or Section 2.

Spanish-Language Form:

- Using the Spanish-language Form I-9 outside of Puerto Rico.

What Remains a Technical Violation?

Employee Information in Section 1:

- Failure to use the current edition of the Form I-9.
- Failure to provide other last names used or a physical address.
- Failure to ensure the Social Security number is correct when the 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 form editions).
- Missing employer's name or physical address.

Supplements A and B:

- Failure to write the employee's full name at the top of Supplement A or B.
- Failure to record the employee's new name (if applicable) in Supplement B.

The End of the Document Photocopy Safe Harbor

Previously, if an employer failed to record required document information in Section 2 of the I-9, ICE often treated this as curable if the employer maintained a legible photocopy of the document on file.

That safe harbor is no longer in place. Under ICE's new guidance, omissions in these fields are substantive violations even if photocopies of the documents are on file. Employers who relied on this practice as a backstop must now ensure their data entry is complete and accurate at the time of onboarding.

(2) WHAT IS AT STAKE — GREATER FINES IN A SHIFTING LANDSCAPE

The practical consequence of the reclassification is straightforward: more, and more potentially costly, violations per Form I-9. More Forms I-9 with violations push employers into higher penalty tiers; for large employers or those with high workforce turnover, the aggregate exposure can reach six or seven figures from a single audit.

Thus, the time to fix I-9 errors is now: *before* the audit notice arrives.

(3) BEST PRACTICES FOR EMPLOYERS

Given the heightened enforcement environment and expanded penalty exposure, employers should consider the following steps:

1. Elevate I-9 Compliance to an Enterprise Priority

Treat Form I-9 compliance as a company-wide legal and financial risk. Ensure that senior leadership, compliance teams, and internal audit functions understand the updated enforcement landscape.

2. Conduct an Internal I-9 Audit

Conduct an internal audit of I-9 records to identify errors and assess the current error rate and potential fine exposure. Develop a prioritized remediation plan targeting time-sensitive violations, high-risk locations, and employee groups, etc.

3. Strengthen Training and Standardize Procedures

Provide targeted training to all staff who complete or reverify I-9 forms, with a focus on:

- Timing requirements: Section 1 must be completed on or before an employee's first day of work; Section 2 must be completed within three business days from the first day of work for pay.
- The full list of errors now treated as substantive violations.
- Proper use and documentation of the alternative (remote) inspection procedure.

Implementation of standardized checklists for onboarding and reverification can reduce inconsistency and human error.

4. Review Electronic I-9 Platforms

Confirm that any electronic I-9 system and e-signature tools the organization uses comply with applicable regulatory requirements. Specifically:

- Verify how the system captures dates and signatures.
- Confirm that audit trails are comprehensive and exportable.
- Review how corrections, reverifications, and rehires are recorded.
- Document vendor due diligence — system deficiencies are now treated as substantive violations during an ICE inspection.

5. Prepare an ICE Response Protocol

Instead of waiting until ICE arrives, consider taking the following steps now:

- Designate an internal ICE Response team composed of HR, legal, and compliance representatives.
- Establish a written response protocol covering each type of ICE visit (I-9 audit, and warrant execution).
- Centralize I-9 storage (physical or electronic) so records are organized and readily retrievable (and, where possible, separate from other employment records).
- Maintain documentation of good-faith compliance efforts — policies, training materials, audit reports, and remediation actions — which can be critical in penalty negotiations.

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