

PUBLICATION

Is an Audit in Your Future? Best Practices and Advice for I-9 Compliance

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Late last year, Tom Homan, the Acting Director of the Immigration and Customs Enforcement agency (ICE), stated that he instructed his agency to dramatically increase the number of I-9 audits targeting U.S. employers. According to news reports, Director Homan indicated that the scope of the investigations would be to find employers who fail to properly comply with the I-9 Employment Eligibility Verification requirements, thereby enabling undocumented workers, and also to arrest workers found to be undocumented as the result of the investigations.

Since then, ICE has focused on creating a "culture of compliance" by relying on I-9 inspections to find and fine employers who have not properly completed employment eligibility verification. The number of businesses subjected to I-9 audits has soared over the last few years from hundreds to thousands per year. Monetary penalties for knowingly hiring and continuing to employ undocumented workers 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.

Given ICE's renewed attention on holding employers accountable, HR professionals involved in hiring and employment verification should ensure that they are ready for a worksite audit. Readiness not only requires a solid and in-depth understanding of the complicated maze of compliance requirements but also the proper steps and procedures for conducting an internal audit of existing I-9s to determine accuracy. Taking proactive steps now to ensure that your company has a compliant I-9 program is the best way to minimize any potential fines or penalties that may be levied by ICE.

Best Practices for I-9 Compliance

- Designate a trained HR leader to centralize the I-9 process and to be responsible for creating internal processes and procedures for I-9 completion, retention, and storage.
- Conduct internal training to ensure that employees responsible for this function are well informed and understand anti-discrimination protocols. Do the individuals responsible for I-9 verification know the federal guidelines surrounding the I-9 process, and do they have substantial knowledge of the M-274 I-9 Manual?
- Do you have a system for tracking certain immigration statuses and ensuring that re-verification takes place in a timely manner? It can be cumbersome and labor intensive to manually track the expiration and remind workers to provide updated documents in a timely fashion. There is plenty of room for human error on the employer side, which may allow an employee to become unverified and place the company out of compliance. Ensure that your tracking systems not only provide a method of entering I-9 data but also provide confirmation of employment authorization, allow you to create customized reports for self-auditing, implement safeguards to prevent over documentation, and catch mistakes with data entry.
- Be sure to verify remote employees properly and timely. Remote employees must still complete Section 1 of the Form I-9 and have their identity and/or work authorization documents reviewed in person by a trusted agent or representative. Photocopying of documents and sending them to employers is not permitted. Employers should provide clear instructions to new hires on how to complete the I-9 process if they are remote workers, and employers should establish a review process for all remotely completed I-9s.

- Employers should plan on conducting a routine self-audit at least once per year to help ensure ongoing compliance with the employment verification, I-9, and E-Verify rules. Special guidance and rules exist for correcting errors and/or omissions on various sections of the Form I-9 as well as how the employer should properly handle lost, incomplete or outdated I-9s. HR should also set protocols for requesting additional documents from existing employees, and employers should provide employees with a reasonable amount of time to address any deficiencies associated with their Forms I-9. The reasonableness of the timeframe should be determined on a case-by-case basis, taking into consideration the specific nature of the deficiency and the time required to present alternative documentation.

Key Takeaways

It is never too late to be audit ready. Employers should be proactively taking steps to ensure I-9 compliance and preparing for conducting an internal I-9 audit if they have not done so within the last year. All employers should periodically conduct self-audits, with the help of outside counsel if necessary, to help minimize potential liability and to put themselves in a position to successfully handle an audit.