

Stepped up ICE enforcement serves as a good reminder to employers to self-audit

The Immigration and Customs Enforcement has renewed its efforts to crack down on illegal immigration in the Trump era. As part of these enforcement efforts, ICE has increased audits of employers, with the plan being to increase such work-site enforcement efforts by 400%. Work-site enforcement is one part, in a much larger effort to identify and deport undocumented immigrants. Make no mistake, ICE is looking to punish employers for hiring undocumented workers for non-compliance found during the audits. Employers must prepare for the likelihood that ICE could come knocking. And, their first line of defense is ensuring that the Form I-9 completed for each employee is accurately completed. Toward that end, the time is now for employers to conduct an internal audit and Gallagher & Kennedy attorneys are available to assist you in that effort.

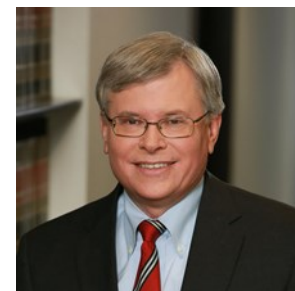
I-9 Forms Must Be Completed For All Employees. Federal law requires that all employees have a Form I-9 completed if they were hired after the Form I-9 came into existence (1986), which at this time is likely most if not all employees.

The Most Current Form I-9 Must Be Used. The United States Citizenship and Immigration Services (USCIS) requires employers to use the current form for any new hires or for employees who need to complete a new Form I-9 for any reason. If, when conducting your audit, you discover that an employee completed an expired form (at the time he/she was hired), the employee will need to complete a new and current form to be in compliance with USCIS requirements. If a new form needs to be completed, staple the new form to the original form with the new one in the front. Do not discard the old, incorrect Form I-9.

Completing The Form I-9 For a Newly Hired Employee Involves 3 Steps.

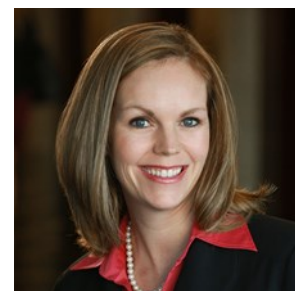
First, the employee must correctly fill out (unless the employee is illiterate and unable to complete that Section 1) and sign Section 1 of the form. It is the employer's responsibility, however, to make sure Section 1 is properly completed. If you note that an employee has missed an area, you should request that the employee complete it. Do not complete it for him or her. If the employee makes an error when completing Section 1, provide a new I-9 and have the employee complete it fully.

Second, the employer must review and verify the employee's documents (not copies) to establish the employee's identity and work authorization. You may not request specific documents within the List A, B, or C columns. In rare circumstances, some documents



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(e.g. foreign passport) presented by the employee will require a request for follow up documentation to verify employment authorization.

Third, the employer must use the information on the documents to correctly and completely fill in and sign Section 2 of the form. A commonly missed portion of Section 2 is where the employer must fill in the name and address of the business. This is one area of the Form I-9 that we suggest having pre-printed on the form to reduce the potential for mistakes. While, this technical violation seems minimum, ICE will still issue penalties for technical violations.

The employer must complete the entire process within three business days of the new employee's start of employment.

Monetary penalties for errors. An employer's failure to fill out a Form I-9 for any employee can subject the employer to civil penalties. But even employers who do complete Form I-9s on all new hires still can be liable for monetary penalties for errors on the forms. Moreover, multiple errors on one form can result in multiple violations. For example, a form that is missing an employee's signature, that contains an inaccurate document number, and that is missing the date of the employer's signature would conceivably result in three separate monetary penalties.

Using an outdated Form I-9 will also constitute an "error" in completion process, and therefore can result in a monetary penalty. An employer who completely and properly fills out the entire Form I-9, that is, still can be subject to a monetary penalty for using the outdated form. Notably, the penalty amounts for Form I-9 violations increased just prior to the surge in audits and each error can result in a penalty ranging from \$216 to \$2,156.

Storing I-9 Forms Of Current Employees. It is a best practice to store the I-9 Forms for all current employees in the same location. The forms should be stored alphabetically to allow quick review of a Form I-9 for any employee. This also allows for easy removal of individual forms of former employees when employers perform necessary archiving functions.

Form I-9 Retention Procedures. The law requires that an employer keep the Form I-9 for three years after the date of hire or one year after the date of termination whichever is later. Therefore, when an employee leaves the company, determine how long they were with the company and put them into the appropriate retention folder to ensure they are retained for the appropriate retention period, but no longer. It is a best practice to retain the Form I-9s only as long as necessary, as a government audit will be of all forms retained, regardless of the retention requirement. And, deficient forms retained after the required retention period are subject to the same penalties as those forms within the retention period.

In closing. The above tips about auditing I-9 Forms are only a handful of many that should be considered to ensure compliance with U.S. Citizenship and Immigration Services verification requirements. USCIS has a M-274 Handbook for Employers to assist you in your internal audit. Should you require further assistance, reach out to an attorney to assist in an internal audit or conduct the audit on your behalf to avoid the potential I-9 Form pitfalls and penalties that result from being unprepared when the government initiates the audit. We encourage employers who have specific questions about the Form I-9 process, or about conducting a self-audit, to contact any of the members of Gallagher & Kennedy's Employment & Labor Law practice.