

e-Alert: Employers at Greater Risk for ICE I-9 Audits This Year

Background

The number of Form I-9 audits has surged in 2018 and employers need to take notice. Under federal law, employers are required to verify the identity and work authorization of all individuals they hire, and to document that information using the Employment Eligibility Verification Form I-9. US Immigration and Customs Enforcement (ICE) uses the I-9 audit program to promote compliance with the law and to address and deter illegal employment.

ICE's Homeland Security Investigations (HSI) announced at the end of July the results of a two-phase nationwide operation in which I-9 audit notices were served to more than 5,200 businesses around the country since January. In the first phase, January 29 to March 30, HSI served 2,540 notices of inspection (NOIs) and made 61 arrests. In the second phase, July 16 to 20, HSI served 2,738 NOIs and made 32 arrests. An NOI informs business owners that ICE is going to audit their hiring records to determine whether they are complying with existing law.

Carrying out its Commitment

Employers should prepare for the increased possibility of a government audit of their I-9 forms. ICE has already begun twice as many worksite investigations in 2018 as it completed in all of 2017, according to a recent ICE news release. While the agency routinely conducts worksite investigations to uphold federal law, "HSI is currently carrying out its commitment to increase the number of I-9 audits in an effort to create a culture of compliance among employers," according to Derek Benner, HSI's acting executive associate director.

HSI's worksite enforcement strategy focuses on the criminal prosecution of employers who knowingly break the law, and the use of I-9 audits and civil fines to encourage compliance with the law. HSI's worksite enforcement investigators also help combat worker exploitation, illegal wages, child labor, and other illegal practices. According to HSI, its worksite enforcement protects jobs for US citizens and others who are lawfully employed.

Ramped-up enforcement means serious consequences for employers

Employers need to be aware of this escalated enforcement activity and understand the serious consequences of violations of Form I-9 rules and other immigration laws. Failure to comply can lead to criminal and civil penalties, judicial forfeitures, restitution, and debarment. Criminal arrests of employers and administrative arrests of unauthorized workers can result as well. Employers should plan for the possibility of receiving a notice of inspection of their I-9 forms.

Employer next steps

1. **Conduct "internal" I-9 audits.** Have you received a letter from ICE instructing your company to produce I-9 forms for inspection? If so, you are not alone. If not, it may only be a matter of time. The US government has taken immigration enforcement to historic new levels with record-breaking numbers of I-9 audits, fines, and the increased criminal prosecution of employers. More than ever, compliance is critical. If you don't have the internal resources to conduct an audit,



- consider partnering with a company like HR Knowledge to assist or conduct an audit for you.
2. **Consider implementing an electronic I-9 system.** A central electronic system manages the entire I-9 and E-Verify process and reduces your I-9 processing time from days to minutes, ensuring that your new hires are cleared and ready for work on their first day of employment. Electronic systems create virtually error-proof I-9 forms and provide easy search and retrieval of I-9 forms and audit trails. If you would like to learn more about our electronic I-9 solution, [email us](#).
 3. **HR Knowledge can help.** We have developed an "I-9 Audit Toolkit" to assist you in conducting an internal audit, or you can outsource the entire process to us. If you are interested in learning more, please [email us](#).

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