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ICE Issues Significant Update on Form I-9 Enforcement

Worksite enforcement is back in the spotlight as U.S. Immigration and Customs Enforcement (ICE) intensifies its use of Form I-9 inspections to scrutinize employer compliance. These inspections are administrative in nature but can occur without prior warning and may result in significant civil penalties, operational disruption, and reputational risk for employers of all sizes and in all industries.

ICE recently [announced a significant update](#) on how it evaluates Form I-9 errors during worksite inspections, effective immediately. Specifically, ICE has revised its Form I-9 inspection fact sheet to reclassify several common I-9 errors as “substantive” violations, considerably increasing potential penalty exposure for employers.

Background

The Immigration Reform and Control Act (IRCA) requires employers to verify the identity and employment authorization of all individuals hired in the United States after November 6, 1986, using Form I-9. IRCA also outlines potential sanctions for employment-related violations. Historically, Form I-9 violations fell into two categories:

- Technical or procedural violations, which, following an audit, could be corrected within a 10-business-day grace period; and
- Substantive violations, which are not subject to a cure period and could result in immediate monetary penalties.

Under ICE’s new guidance, multiple errors that were long treated as correctable technical violations are now deemed substantive. As a result, no correction period applies, and penalties may be assessed immediately.

Errors Now Treated as Substantive Violations

ICE may now classify the following as substantive violations:

- Missing date of birth in Section 1;

- Missing USCIS/alien number in Section 1, when applicable;
- Missing date next to employee signature in Section 1;
- Missing expiration date;
- Missing date of hire or failure to date Section 2;
- Missing employer representative title, signature, or date;
- Incomplete or incorrect preparer/translator information;
- Use of the Spanish language Form I-9 outside of Puerto Rico;
- Incomplete List A, B, or C data in Section 2, even when copies of the documents were attached;
- Failure to check alternative procedure box/not being enrolled in E-Verify when using remote verification;
- Missing rehire date in Supplement B; and
- Electronic I-9 audit trail, e-signature, or security documentation deficiencies.

The above issues were previously viewed as technical violations and were generally correctable during the audit process without penalty. Other violations that were previously viewed as substantive, including without limitation, failure to timely complete Form I-9 and failure to have the employee sign the attestation, remain under the same “substantive” category .

The following are “technical” errors under the new guidance, which may be cured:

- Failure to use the Form I-9 version current at the time of initial completion;
- Failure to correctly verify the Social Security Number in Section 1, for E-Verify enrolled employers;
- Missing complete name at the top of page 2, Supplement A, or Supplement B;
- Missing other last names used (if any);
- Missing employee physical address in Section 1;
- Missing business name or physical address in Section 2;
- Missing new name (if applicable) in Supplement B during reverification.

Why This Matters

ICE Form I-9 inspections remain a central enforcement tool and carry meaningful legal and financial consequences. This change significantly raises the stakes for employers, particularly those that have historically relied on post-audit corrections to address minor I-9 deficiencies. ICE's updated enforcement posture narrows the margin for error by reclassifying many common paperwork mistakes as substantive violations — eliminating the opportunity to cure defects and exposing employers to immediate penalties.

Most importantly, this reclassification represents a clear break from long-standing practice. For decades, employers were advised that certain technical errors could be corrected during an ICE audit. Under ICE's new guidance, those same errors must now be identified and corrected before a Notice of Inspection (NOI) is issued to avoid immediate penalties.

Recommended Action Items

Considering this updated enforcement position, employers should consider taking the following steps:

- Complete a comprehensive Form I-9 review with immigration counsel, including a reassessment of any prior audits to confirm that all now-substantive errors have been fully corrected.
- Review retention practices to ensure Forms I-9 are properly retained and purged when no longer required.
- Assess electronic I-9 platforms for regulatory compliance, ensuring required functionality such as audit trails, secure indexing, and compliant electronic signature processes.
- Confirm proper implementation of DHS-authorized alternative verification procedures, and review E-Verify enrollment and usage where applicable.
- Provide targeted retraining for individuals responsible for I-9 completion, emphasizing complete and accurate entries in Sections 1 and 2, as well as Supplement B.

- Designate a response team or point of contact for ICE inspections in advance.

Employers that understand the inspection process and invest in compliance readiness are best positioned to reduce liability and navigate inspections effectively.

For questions or assistance with conducting an internal Form I-9 audit, please contact the authors or any attorney on our [Immigration Team](#).

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