



Review I-9 Forms in Light of Immigration Enforcement Activities

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CHICAGO—The federal government is increasing its immigration enforcement activities, which means it is more important than ever for HR professionals to ensure that they're properly completing and retaining I-9 forms and related documents.

There are three circumstances in which immigration agents may knock on an employer's door, explained Becki Young, an attorney with Hammond Young Immigration Law in Silver Spring, Md. She was speaking at a concurrent session during the SHRM 2018 Annual Conference & Exposition. (www.shrm.org/hr-today/news/hr-news/conference-today/Pages/default.aspx)

- **ICE raids.** Immigration and Customs Enforcement (ICE) workplace raids are extreme and don't happen often, but they have been happening during President Donald Trump's administration, Young noted. In this situation, ICE agents show up at a worksite unannounced, question workers and possibly detain anyone suspected to be in the U.S. without authorization.
- **Site visits.** Under the Administrative Site Visit and Verification Program, Fraud Detection and National Security officers make unannounced worksite visits to verify the information in a worker's visa petition as part of a compliance review.
- **Form I-9 audits.** Employers are required to complete an I-9 form for each employee to verify employment eligibility in the United States. During an I-9 audit, an employer must hand over its I-9 forms to ICE officers for inspection.

Employers may face penalties for failing to comply with I-9 documentation rules.

Under the Trump administration, employers have seen more enforcement activity, and they can expect that trend to continue. ICE Deputy Director Thomas Homan issued a directive calling for more worksite enforcement investigations "to ensure U.S. businesses maintain a culture of compliance."

In the first six months of fiscal year 2017, the agency doubled its number of ongoing worksite cases compared to the last full fiscal year. For example, there were about 3,500 worksite investigations in the first half of the year compared to 1,700 in all of fiscal year 2016. And there are 2,280 I-9 audits so far in fiscal year 2017 compared to 1,360 the prior fiscal year.

Make Sure I-9 Forms Are Accurate

The I-9 form was created as part of the employment verification requirement under the Immigration Reform and Control Act of 1986. Employees must complete Section 1 of the form, and employers must review the information to ensure it is complete and accurate.

Employers must also review documents that establish identity and work authorization. The last page of Form I-9 lists documents in Column A that establish both identity and work authorization, in Column B that establish identity and in Column C that establish work authorization. Employers may ask only for either one document from Column A or one document each from Column B and Column C. When requesting and reviewing documents employers must:

- Examine original documents no later than three days after the employee's start date. Some employers ask if they can verify remote workers' documents through Skype, Young said. The answer is no.
- List the documents in the correct column on the form. For example, a passport needs to be listed in Column A because it establishes the employee's identity and work authorization.
- Refrain from recording too many documents on the form. If the employee offers a U.S. passport—which satisfies all requirements—and another document, tell the employee that you only need to see the passport and don't examine the other document, Young said. If the employee is a commercial driver who needs to provide a license for reasons other than I-9 verification, keep that documentation separate from the I-9 form. Don't record it on the form or keep a copy of the license with the form, she added.

The employee's documents must appear genuine. "If someone has a really good fake document, you are not expected to catch that," she noted.

Some work authorization documents are temporary and must be reverified. "It's really critical that you have a good [reminder] system to make sure you are reverifying documents before they expire," she said.

Form I-9 compliance is tricky, and employers face many more issues than what has been mentioned here. Young recommends visiting the U.S. Citizenship and Immigration Services website for answers to common questions.

[SHRM and CFGI eLearning: Employment Eligibility: I-9 and E-Verify (<https://www.cfgi.org/events-learning/elearning/employment-eligibility>)]

Annual Conference attendee James Jansen, SHRM-CP, works for a restaurant company in Chicago that takes a decentralized approach to completing I-9 forms. "It's typically done at the store level," he said. Managing the process and trying to fix errors as soon as they come up can sometimes be a challenge in a high-turnover environment. He was glad to confirm during the session that his company is doing things correctly and has a good process in place.

Employers should be proactive and do regular self-audits, Young said. If corrections are necessary, employers should be very obvious about the changes. Use a different color pen and sign and date the changes.

"Don't wait until you're audited by ICE to start reviewing your I-9 forms," she said.

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