

I-9 COMPLIANCE AND ICE AUDITS: THE NEW ENFORCEMENT LANDSCAPE

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AGENDA

1. Rising worksite enforcement and employer exposure
2. Why self-audits and escalation protocols are now mission-critical
3. Practical steps to strengthen I-9 compliance today

WORKSITE ENFORCEMENT IS EXPANDING: WHAT EMPLOYERS NEED TO KNOW

- July 16, 2026 Homan Interview:
 - Worksite enforcement is ramping up
 - Criminal cases are the priority
 - Expanded use of I-9 audits as a screening tool

WORKSITE ENFORCEMENT IS EXPANDING: WHAT EMPLOYERS NEED TO KNOW

- July 16, 2026 Homan Interview:
 - More government data sharing and cross agency involvement
 - The main focus is now on employers, not only workers

WORKSITE ENFORCEMENT IS EXPANDING: WHAT THIS MEANS FOR EMPLOYERS

- A higher likelihood of I-9 audit activity
- Social Security no-match letter follow-up
- Criminal, not just civil, exposure
- Increased scrutiny of subcontractor and staffing-agency relationships

SELF-AUDITS: YOUR FIRST LINE OF DEFENSE

- ICE I-9 audits expected to be a renewed priority
- Employers found liable for increased civil fines and penalties when records were incomplete/incorrect
- DOJ/DHS joint guidance encourages proactive internal I-9 audits before government scrutiny
- Best practice: annual internal Form I-9 audit

WHAT THE LAW REQUIRES IN EACH I-9

- Immigration rules require employers to:
 - Have employees complete Section 1 at time of hire
 - Review documents that reasonably appear genuine and relate to the individual
 - Complete Section 2 within 3 business days
 - Properly retain I-9s for all post-11/6/1986 hires
- Employers liable for substantive Form I-9 paperwork violations; civil monetary penalties

STRUCTURING THE SELF-AUDIT

- Follow DOJ/ICE joint internal audit guidance; avoid discriminatory targeting
- Best-practice elements:
 - Written hiring and I-9 verification policy
 - Annual internal I-9 audit protocol
 - Self-reporting procedures to inform ICE of significant violations or deficiencies
 - Protocols for responding to no-match letters
 - Tip line and response protocol for credible internal tips
- Consider counsel-led audits to preserve confidentiality and privilege; particularly for high-risk, large, or complex workforces

HOW TO CONDUCT AN I-9 REVIEW

- Scope and sampling:
 - Full-population review for smaller employers
 - Risk-based sampling (e.g., specific plants, units, or time periods) for larger employers or high-risk sectors

HOW TO CONDUCT AN I-9 REVIEW

- For each I-9, verify:
 - Section 1 completed, signed, and dated on time
 - Section 2 completed, signed, and dated within 3 business days
 - Documents recorded are acceptable, appear genuine, and relate to employee
 - Any reverification properly done and tracked
 - Retention rules observed (no premature destruction; timely destruction of eligible forms)

HOW TO CONDUCT AN I-9 REVIEW

- Identify:
 - Substantive paperwork violations vs. correctable technical issues
 - Missing I-9s or “failure to prepare” cases
 - Red flags suggesting unauthorized employment or document fraud

FIXING WHAT YOU FIND – WITHOUT CREATING NEW PROBLEMS

- Principles:
 - Do not backdate or falsify information
 - Use proper correction methods (line through, annotate, initial/date)
 - Have the person who made the original entry correct it if possible
- For missing I-9s: Complete new I-9 promptly, using current form and correct dates (with explanation memo)

FIXING WHAT YOU FIND – WITHOUT CREATING NEW PROBLEMS

- For problematic documents or unauthorized status indicators:
 - Follow non-discriminatory reverification and remediation policies
 - Avoid over-documentation or selective scrutiny that could raise discrimination issues
 - Document all audit steps, findings, and corrective measures; maintain records to show good-faith compliance efforts

BUILDING A SUSTAINABLE I-9 COMPLIANCE PROGRAM

- Core program features:
 - Written I-9 policy and procedures
 - Regular training for HR and hiring managers
 - Annual internal I-9 audit cycle
 - Protocols for no-match letters and credible tips
 - Procedures to ensure contractors and subcontractors comply with I-9 requirements
- Document all trainings, audits, and policy updates as evidence of good faith

HOW GOVERNMENT I-9 AUDITS BEGIN: FROM NOTICE OF INSPECTION TO FINES

- HSI responsible for I-9 enforcement and inspection of verification violations
- Administrative inspection process:
 - Service of Notice of Inspection (NOI) compelling production of retained I-9s
 - Special agents/forensic auditors review for substantive and technical violations
 - Outcome: finding of compliance, Warning Notice, or Notice of Intent to Fine (NIF)
- I-9 audits used in both criminal and administrative investigations

ESCALATION PROTOCOLS: WHAT HAPPENS WHEN A RED FLAG APPEARS?

- Triggers for escalation:
 - Receipt of NOI, subpoena, or other HSI/ICE contact related to I-9s or workers
 - Serious findings from internal I-9 audit (e.g., systemic failures, evidence of knowing hire/continuing to employ)
 - Credible internal tips about unauthorized employment, document fraud, trafficking, or exploitation
 - No-match letters raising significant unresolved discrepancies

ESCALATION PROTOCOLS: WHAT HAPPENS WHEN A RED FLAG APPEARS?

- Protocol elements:
 - Designate a specific company representative to manage investigations and inquiries; centralize communications with ICE/HIS
 - Ensure immediate routing of any government contact or serious internal findings to legal and compliance teams
 - Pre-defined decision tree for: internal investigation, remediation, potential self-reporting, and operational planning
- Encourage employees to use internal tip line; establish clear response procedures

RESPONDING TO GOVERNMENT CONTACT: FIRST 72 HOURS AFTER AN NOI OR WORKSITE ACTION

- Upon NOI:
 - Notify designated representative and legal immediately
 - Confirm response deadline and scope of requested I-9s and records
 - Organize and review forms before producing; note prior internal audit findings

RESPONDING TO GOVERNMENT CONTACT: FIRST 72 HOURS AFTER AN NOI OR WORKSITE ACTION

- Worksite actions/raids:
 - Employees have right to request access to legal counsel; have counsel on-call
 - Coordinate with counsel to protect rights of company and employees during on-site questioning and records requests
 - Implement contingency plans for staffing disruptions caused by arrests or detentions
- Maintain contemporaneous notes on interactions and requests

USING ESCALATION TO REDUCE RISK

- Escalation protocol should address:
 - When to seek external counsel review of internal findings
 - When and how to remediate or terminate problematic relationships (e.g., staffing agencies, subcontractors)
 - When to consider self-reporting significant violations or suspected criminal misconduct to ICE
- Ensure enhanced oversight of high-risk sectors and third-party labor supply chains
- Use audit and escalation records to demonstrate proactive, good-faith compliance in negotiations over penalties

USING ESCALATION TO REDUCE RISK

- Expect more I-9 scrutiny, often via centralized review rather than only local complaints
- Criminal exposure for employers – not just civil fines – is now a stated priority
- Robust, documented self-audits and clear escalation protocols are essential risk controls

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