

TOP 3 MISCONCEPTIONS EMPLOYERS HAVE ABOUT I-9 SELF AUDITS

Insights

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Over 11 million people are likely in the United States without legal authorization to work, accounting for over 3% of our workforce. This often forces employers to choose between essential employment compliance and economic competitiveness. Employers who seek to remediate against this risk are regularly told to conduct I-9 self-audits – but most employers have misconceptions around how to complete these critical compliance health check processes.

This Insight addresses the most common misconceptions and how you can address them. *[To learn more about I-9 compliance, join our [advanced training webinar](#) on December 6.]*

Misconception 1: Self-audits and Corrections are Unnecessary

One prevalent misconception is that self-audits of Form I-9s are unnecessary. However, this could not be further from the truth given the high stakes associated with I-9 errors – many of which could easily be identified and remedied if an audit were to be conducted. For example:

- It is not uncommon for the government to issue I-9 financial penalties of over a million dollars.
- Companies can be hit with significant fines even if they have no foreign employees.
- The government can come down hard on employers even for simple errors in their processes or even if they use electronic I-9 systems.

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- Failure to follow I-9 procedures can result in discrimination lawsuits based upon failure to accept questionable documents or overdocumentation.
- Companies with unions may see grievances resulting from I-9 noncompliance as union representatives are highly protective of their members.
- I-9 violations can result in investigations through the Equal Employment Opportunity Commission and Immigrant and/or Employee Rights Section of the Department of Justice.
- Publicly traded companies can find themselves reporting to the Security and Exchange Commission if they are caught in an I-9 investigation.
- Federal contractors and subcontractors may find themselves disbarred from existing federal contracts and the ability to bid on future federal contract opportunities if they run afoul of I-9 rules.
- Companies involved in a merger or acquisition transition may find immigration compliance a major hurdle in finalizing a deal.
- Most importantly, a poorly timed I-9 investigation by ICE can result negative publicity and interruption of business continuity by not addressing immigration compliance in companies with undocumented workers or poorly planned communication.

Self-audits address these issues, allowing employers to mitigate against these threats. Regular self-audits are proactive measures that can help identify and rectify errors before they escalate into serious compliance issues that can have serious unexpected impact.

Misconception 2: I-9 Corrections Are Too Difficult to Address

I-9 corrections can be simple once an employer commits to follow a clear remediation plan. Below is the most common five-step plan that can be adapted to most situations you'll face. But employers should also be prepared to escalate complex situations to legal counsel experienced with immigration compliance and I-9 audits.

- **Step 1:** The process of remediation starts by familiarizing yourself with the requirements outlined in the Form I-9 instructions and the regulations provided by the U.S. Citizenship and Immigration Services and training the staff who will assist in the remediation process.
- **Step 2:** Ensure that you have organized and retained all completed I-9 forms for current and former employees. Separate them into different folders or files with any supporting documentation and E-Verify records associated with those I-9s. Since ICE typically focuses on current employees, start with them.
- **Step 3:** Go through each I-9 record to ensure that it is completed accurately and in a timely manner. If you keep supporting documentation, check that the information provided by employees matches the supporting documentation and it is done consistently. Be cautious about making changes to completed forms as you can compound the issue by making the audit trail hard to follow. Take careful notes to determine if there are specific trends which will make decisions on future training and policies more clear.
- **Step 4:** Have a remediation plan for the I-9 records. Start with a communication plan to avoid creating panic. For employees who may not have proper documentation, be prepared to have a strategy to replace them.
- **Step 5:** Once you complete your remediation, work with experienced counsel to upgrade processes, improve policies, and memorialize those changes.

Misconception 3: Immigration Compliance Stops With the Form I-9

The I-9 audit is just the beginning of an immigration compliance health check. You should consider implementing an electronic I-9 system which might already exist in your Human Resources information systems provider. Conduct regular trainings and annual audits to ensure continued compliance. If there are extensive issues, you may consider working with E-Verify to conduct a desk review and training.

Many businesses rely on skilled foreign workers to fill critical roles. Compliance with various visa programs, such as the H-1B program, requires employers to not only file the necessary petitions but also adhere to wage requirements,

working conditions, and other program-specific regulations. Failure to comply with these requirements can lead to severe consequences, including fines and visa disqualification.

Immigration is a hot button election topic. Immigration changes to address border security may also include significant changes in laws that impact employers. Employers must stay informed about updates and modifications to ensure continued compliance. Regular training for HR professionals and designated compliance officers is essential in keeping abreast of the latest developments.

Conclusion

Dispelling common misconceptions surrounding I-9 self-audits is crucial for employers committed to maintaining a culture of immigration compliance. By recognizing that self-audits are not optional and the process for effective remediation, employers can navigate the complexities of Form I-9 compliance with confidence.

Regular and thorough self-audits not only mitigate risks but is also one critical employment of general workplace compliance which will create a stronger foundation for sustainable growth in a complex economy. For more information on these topics, [register for the Fisher Phillips presentation on advanced topics on immigration compliance on December 6.](#)

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