

ICE CHANGES I-9 ENFORCEMENT STANDARDS, RAISING STAKES FOR EMPLOYER COMPLIANCE

Insights
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Federal immigration officials just quietly but significantly shifted how they will evaluate Form I-9 violations, making it more likely that you could be tagged with “substantive” errors that could have big consequences. Historically, certain I-9 errors were treated as technical and correctable, but March guidance from US Immigration and Customs Enforcement (ICE) now signals that some of these errors may be elevated to trigger financial penalties. What changed and what should you do to prepare for this new enforcement era?

What Changed: Reclassification of I-9 Violations

ICE’s new guidance expands what the agency considers to be “substantive” violations instead of “technical” violations, particularly where they affect the integrity or completeness of Form I-9. The following types of omissions and inaccuracies may now be viewed as substantive violations:

- Missing employee date of birth in Section 1
- Missing employee USCIS/alien number when applicable
- Missing date next to employee signature in Section 1
- Missing expiration date in Section 1 when required
- Incomplete or incorrect employee attestation in Section 1

Related People



Jocelyn Campanaro

Partner

303.218.3667



Brian J. Coughlin

Partner

617.532.5892

- Failure to date Section 1
- Missing or incomplete preparer/translator information
- Use of Spanish-language Form I-9 outside Puerto Rico
- Missing employer name or title in Section 2
- Failure to record first day of employment in Section 2
- Failure to date Section 2
- Incomplete List A, B, or C document information
- Failure to properly complete document verification fields
- Failure to record rehire date when applicable
- Failure to properly complete reverification
- Failure to check box for remote document review procedure
- Use of remote verification without E-Verify enrollment
- Noncompliant electronic I-9 systems or audit trail issues
- Failure to complete I-9 within required timeframes

Employers have long been expected to comply with these requirements, but the stakes just got considerably higher. Under previous enforcement norms, technical errors could often be corrected during an ICE inspection and escape financial penalty entirely. Substantive violations, by contrast, are more likely to trigger fines. And with ICE now reclassifying a broader range of errors as substantive, employers have significantly less room to avoid penalties for routine administrative mistakes. For organizations managing hundreds or thousands of I-9s, that expanded exposure could add up fast.

In practice, this includes issues such as minor omissions that remain uncorrected over time, inconsistent information across different sections of the form, and improper corrections that lack a clear audit trail. It also includes the use of outdated forms or incorrect versions, as well as failures to follow proper correction protocols when errors are identified.

What Employers Should Do Now



Russell Ford

Partner

207.477.9972

Service Focus

Government Relations

Immigration

Employers should also be aware that this policy shift is occurring alongside increased enforcement activity. ICE continues to conduct worksite inspections and audits, often with little advance notice, and its current posture suggests a lower tolerance for incomplete records and a greater willingness to impose penalties. In this environment, you should expect a higher likelihood of audits, shorter response windows following a Notice of Inspection, and increased scrutiny of remote verification practices.

At the same time, ICE appears to be focusing more on patterns of noncompliance rather than isolated errors, which can increase overall penalty exposure per violation. For organizations with large or decentralized workforces, these risks can scale quickly across multiple locations and teams. Even small, repeated errors can compound over time, increasing exposure during an audit or inspection.

You should take proactive steps to assess and strengthen your compliance processes. Suggested actions include:

- Conduct internal I-9 audits with a clear correction protocol.
- Train HR personnel and authorized representatives on updated expectations.
- Standardize onboarding procedures across locations.
- Ensure proper use of the current Form I-9 version.
- Maintain clear documentation of all corrections and updates.
- Evaluate electronic I-9 systems for compliance gaps.

Conclusion

Fisher Phillips will continue to monitor developments and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any member of our [Immigration Practice Group](#).