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10 WAYS PEOS CAN MANAGE I-9 COMPLIANCE RISKS WHILE SUPPORTING CLIENTS

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10 Ways PEOs Can Manage I-9 Compliance Risks While Supporting Clients

Proper completion, storage, and reverification of Form I-9 can be quite complex, especially in support of a large, dynamic workforce. PEOs that choose to offer Form I-9 support to clients as part of their overall service model must therefore place a heavy emphasis on compliance, to reduce potential liability for themselves and their clients. The specific approach taken will differ significantly from one organization to the next. Some PEOs choose to actively participate in the I-9 process, while others simply offer guidance and support. While there's no one-size-fits-all approach, all PEOs can evaluate and possibly improve their I-9 compliance focus by taking these 10 steps.

Employment Verification Basics: Federal law requires employers to verify the identity and work authorization for all individuals hired in the US. Form I-9 is required for all employers, whereas E-Verify, an online verification system, is voluntary for many employers, required for some, and limited in a few states (which we'll discuss in more detail below).

1. Stay Informed on Federal Immigration Priorities

Although I-9 fundamentals haven't changed, the potential for financial penalties is now higher. Recently, US Immigration and Customs Enforcement (ICE) reclassified

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many I-9 administrative mistakes, which were historically considered **technical and correctable**. As of March 2026, many of these formerly reversible mistakes will be classified by ICE as permanent, **substantive errors**. This is notable, as a substantive I-9 error (such as failure to complete the form within required timeframes, missing a date next to the employee's signature, or failing to record the first day of employment) may trigger substantial monetary fines. In implementing its new policy, ICE appears to be focusing on patterns of noncompliance resulting from systemic, repeated mistakes, rather than isolated errors, resulting in the potential for increased penalty exposure. You can read more about evolving ICE enforcement standards and potential penalties [here](#).

2. Determine Your Level of Involvement in the I-9 Process

PEOs take different views of their role in the employment verification process, and the approaches fall along a spectrum:

- On one end, the client is solely responsible for I-9 obligations and the PEO provides no support or guidance, and in such instances, the PEO does not even confirm whether the client has I-9s for each employee.
- Somewhere in the middle, PEOs offer varying levels of support and guidance as to best practices, internal audit services, participation as an authorized representative for document review, and I-9 storage services.
- On the other end, the PEO serves as the employer for I-9 purposes, with the accompanying liability.

PEOs that choose a deeper involvement in the process need to carefully assess their risks, especially now that former paperwork errors might result in irreversible exposure to fines. Substantive violations can be penalized at a rate of \$288 to \$2,861 per I-9 form. That exposure can become substantial, across hundreds of worksite employer-client relationships, and potentially thousands of associated employees.

3. Understand Your E-Verify Options and Obligations

E-Verify is an online verification system that employers may complete using information from the I-9 to electronically compare employment eligibility against government records.



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State, and even local, laws vary significantly on whether E-Verify is required. Some states require it for most or all employers, while others make it voluntary or mandate it only for certain public employers or contractors. A few states limit how employers can use it. You can read more about E-Verify rules [here](#). Be sure you understand which requirements apply to each client's locations. From there, determine what role, if any, your PEO will play. Your options will generally fall into three categories:

- **Minimal responsibility.** E-Verify compliance is generally best treated as the obligation of the client with the employment relationship. If this is your approach, include express language to that effect in your service agreements.
- **Limited responsibility.** Your PEO can act as an E-Verify employer agent, confirming the employment eligibility of individuals who are employees of your client companies. E-Verify offers a special memorandum of understanding for these arrangements, but read it carefully and make sure you understand your obligations before going this route.
- **Most responsibility.** As a co-employer, your PEO can directly create E-Verify cases for the employees you share with client companies. This approach is generally not advisable without a clear purpose and plan. E-Verify rules carry steep penalties for compliance gaps and data errors, and some requirements can be logistically challenging to support across multiple clients.

Work with experienced legal counsel to determine the right option for your organization.

4. Define Your Role in Your Service Agreements

Once you've decided how involved your PEO will be in the I-9 and E-Verify process, make sure your contract language and your actual practices are consistent with your intended approach. Consider including language allocating responsibility for the employment verification process and providing indemnification for noncompliance. Review your agreements with PEO counsel to ensure you've covered all the bases.

5. Follow Remote Verification Rules

As the workforce turns increasingly remote, it's worth noting that only employers enrolled in E-Verify and in good standing may verify employment eligibility remotely. Failing to comply may now result in substantive errors and financial penalties under ICE's new guidance discussed above.

6. Follow Guidelines When Acting as an Authorized Representative

If your PEO provides document review services as an authorized representative, the business name should be the client company's name, not the PEO's name, and the reviewer should sign as the client's agent, adding "Authorized Representative" in the Title field.

7. Note Potential Issues with Electronic Storage

Document storage, electronic signature, and privacy rules for I-9s are complicated and can carry significant penalties. PEOs often invite client employers to store I-9 documents in an onsite or cloud-based database that is maintained either by the PEO or a vendor. Before relying on electronic storage for recordkeeping obligations, confirm that the storage system complies with applicable requirements. If you only require copies of clients' I-9s for payroll setup, however, consider a "review and delete" process so documents are not retained unnecessarily.

8. Train Everyone Who Completes and Maintains I-9s

Anyone examining documents or completing the employer portion of Form I-9 should understand the legal requirements, as well as common mistakes and how to avoid them. Costly errors are more likely when untrained staff are involved in the I-9 process, and an inexperienced reviewer increases the chance of a substantive mistake, which matters more now that fewer errors may qualify as technical and correctable. If you discover errors on I-9 forms, you may want to consult legal counsel to ensure they are corrected properly and that corrections don't unintentionally cause more compliance issues. Additionally, if you have Help Center content for your clients (such as articles and webinars) make sure your content is regularly reviewed for accuracy.

9. Determine Whether to Assist Clients with Self-Auditing

You may want to consider assisting with client-led I-9 self-audits. Before offering this support, you should define whether you will just assist the client's review or take a more active role in identifying and correcting errors. This support can include providing checklists, training materials, audit workflows, storage reports, or general guidance on common I-9 issues, such as missing dates, late completion, incomplete employer sections, remote verification errors, or inconsistent retention practices. Be sure this is reflected in your service agreement.

10. Reach Out to Legal Counsel for Guidance

Employment verification and I-9 compliance can be complex, and experienced legal counsel can help you develop best practices that fit your PEO's service model, including procedures, contract language, and training materials. Counsel can also help you determine when client issues should be escalated for legal review. Additionally, your clients should be encouraged to consult their own legal counsel before correcting errors or responding to patterns of noncompliance.

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. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on the firm's [PEO Team](#).