

# Insights

## ICE TIGHTENS I-9 INSPECTION STANDARDS: LESS LEEWAY AND HIGHER FINES

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Employers should assume that Form I-9 (Employment Eligibility Verification) errors once treated as minor and fixable during an audit may now lead to immediate penalties.

For the first time in nearly three decades, U.S. Immigration and Customs Enforcement (“ICE”) has revised its Form I-9 inspection guidance in ways that increase risk for employers. The statute has not changed, but ICE’s updated view of what counts as a “substantive” violation changes how I-9 errors may be treated during an inspection.

### KEY DEVELOPMENTS

#### 1. Expansion of “Substantive” Violations

In the past, Form I-9 errors generally fell into two categories:

- Technical (or procedural) violations, which employers could correct within 10 business days after notice; and
- Substantive violations, which triggered immediate penalties.

ICE’s March 2026 update broadens the list of substantive violations by moving a number of common errors out of the technical category. That includes omissions and incomplete fields in Section 1 (employee information) and Section 2 (employer verification), along with problems in document details and employer attestations.

#### *Notable Changes*

Below are notable and formerly technical violations that have now become substantive violations:

- Using a Spanish version of Form I-9 outside of Puerto Rico
- Failing to comply with electronic I-9 requirements (e.g., audit trails, e-signatures, or system controls)
- Missing legal name or date of birth (Employee Verification)
- Missing authorized to work until date (Employee Verification)
- Incomplete or incorrect document information including title, issuing authority, and expiration date (Employer Verification)
- Missing date of hire (Employer Verification)

## **2. Reduced (or Eliminated) Opportunity to Cure Errors**

Under prior practice, employers often had 10 business days to correct technical violations identified during an ICE audit. That window is now much narrower. Errors that once could be fixed may now be immediately fineable, which means employers have less ability to reduce liability after an inspection starts. In practical terms, an audit is less likely to serve as a chance to clean up routine paperwork mistakes and more likely to function as a snapshot of existing compliance.

## **3. Increased Financial Exposure**

Substantive violations carry civil penalties ranging from about \$288 to \$2,861 per Form I-9, depending on the circumstances. With more routine errors now falling into that category, audit penalties can add up quickly, especially for employers with large workforces or older I-9 practices.

## **4. Documentation Practices No Longer Cure Deficiencies**

ICE's updated position also makes two things clear: keeping copies of employee documents does not fix missing or incomplete Form I-9 fields, and the form itself must be complete and accurate to avoid penalties. That is a departure from earlier enforcement practice, when document retention could sometimes soften the impact of technical deficiencies.

## **5. Quiet Implementation Without Formal Rulemaking**

ICE appears to have rolled out these changes through an updated fact sheet, rather than through formal rulemaking or a broader public announcement. Even without a regulatory amendment, the revised guidance is likely to shape how future audits and investigations are handled.

## **PRACTICAL IMPLICATIONS FOR EMPLOYERS**

For employers, the practical effect is straightforward: routine I-9 mistakes may now carry more risk and less opportunity to fix them later. Employers should expect:

- More aggressive enforcement of paperwork errors
- Higher audit exposure across existing workforces
- Reduced ability to mitigate liability post-inspection
- Greater scrutiny of internal processes and electronic I-9 systems

## **RECOMMENDED ACTION STEPS**

In response to ICE's updated guidance, employers should consider the following steps:

- Conduct proactive internal audits of existing Forms I-9 to identify and remediate deficiencies before an ICE inspection occurs
- Retrain HR personnel and hiring managers on current I-9 completion requirements, with emphasis on accuracy and completeness at the time of hire
- Review and update I-9 policies and procedures, including onboarding workflows
- Evaluate electronic I-9 systems to ensure fields are not auto-filled, omitted, or inconsistently completed
- Confirm compliance with remote verification procedures, particularly for employers using DHS-authorized alternative document examination methods

## KEY TAKEAWAY

ICE's revised Form I-9 inspection guidance points to stricter enforcement and less tolerance for clerical mistakes. Employers should not assume the audit process will provide time to correct routine errors once an inspection begins. Instead, the safer approach is to address compliance issues before ICE gets involved. Click **HERE** to review the official ICE fact sheet with additional detail on these changes.

Our team will continue monitoring these developments. If you have questions about the updated guidance or need help assessing your compliance practices, please contact Marsha Jean-Baptiste, Chloe N. Craft, Nancy J. Townsend, or any other member of Krieg DeVault's Labor and Employment Practice.

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