

I-9 Compliance Q&A

Q: What is the purpose of this Q&A?

A: This Q&A provides an overview of best practices and practical guidance for maintaining I-9 compliance and preparing for potential worksite enforcement actions.

Q: What does I-9 compliance refer to?

A: Employers must comply with the Immigration Reform and Control Act (IRCA), which mandates that all U.S. employers verify the identity and employment authorization of their employees. Non-compliance can result in significant civil penalties, criminal liability, and reputational harm.

Q: Who enforces I-9 compliance?

A: Homeland Security Investigations (HSI), the investigative arm of the Department of Homeland Security (DHS), conducts I-9 audits. State legislatures and local governments are also increasingly enacting laws focused on employment eligibility verification.

Q: What is E-Verify and how does it fit into I-9 compliance?

A: Many employers use E-Verify, an online system by DHS, to confirm new hires' work eligibility by matching their Form I-9 details with government records. Notably, E-Verify laws vary from state to state (see Resources below).

Q: How should we prepare for potential I-9 audits?

A: As best practice, you should:

Conduct Internal I-9 Audits:

- Check that employees hired after November 6, 1986, have filled out an I-9 form.
- Make sure the I-9 forms are filled out correctly and on time.
- Match I-9 forms with employee records to ensure they are consistent.
 - Look for mistakes like missing signatures, wrong dates, or outdated documents.

Correct Errors:

- When fixing mistakes, do it properly by putting your initials and the date next to the changes.
- Avoid practices that could be perceived as discriminatory.

Document Retention:

- Centralize I-9 management for consistent compliance across locations.
- Keep I-9s separate from other HR files.
- Retain I-9s for the longer of three years post-hire or one year post-termination.
- Be prepared to provide supporting documents like payroll and business licenses if required.
- Secure documents.

Understand Enforcement Dynamics:

- Be prepared to respond to a Notice of Inspection (NOI), which provides three business days to produce I-9s and supporting documents.
- Familiarize HR staff with common I-9 enforcement notices (see below).

Provide Ongoing Training:

- Train HR staff to spot fake documents and fill out I-9s accurately.
- Include guidance on non-discrimination practices to avoid over-documentation or bias.

Utilize Technology:

- Consider whether electronic I-9 systems can streamline processes and reduce human error.
- Employ E-Verify.

Maintain Corporate Compliance Programs:

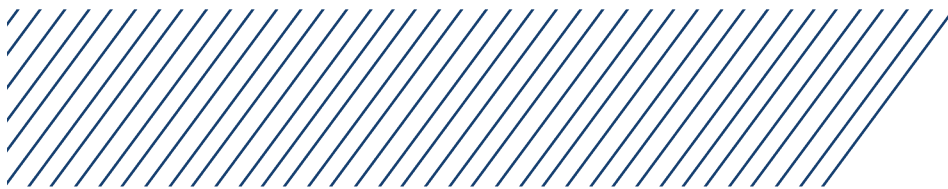
- Conduct regular internal audits and integrate I-9 compliance into wider corporate compliance efforts.
- Understand the "Safe Harbor" No-Match Regulation.
- Evaluate immigration compliance programs, considering *Sarbanes-Oxley*, due diligence in mergers and acquisitions, subcontractor liability, and the pros and cons of E-Verify registration.

Engage Legal Counsel:

- Consult counsel to ensure compliance.

Q: What is virtual verification?

A: Virtual verification provides employers with the ability to inspect employee I-9 documents via video conferencing or similar methods. DHS currently permits remote verification under specific conditions (e.g. only for employers enrolled in E-Verify and in good standing).



Q: Could virtual verification be taken away? How should we prepare?

A: While unlikely, it is possible that virtual verification practices be rolled back. Stay updated on DHS guidance and prepare for in-person verification by having a contingency plan. Ensure employees provide original documents on time and train HR staff on physical verification for consistency and compliance.

Q: Are certain employers more vulnerable to these actions?

A: The government more frequently target employers with significant media visibility or patterns of non-compliance. Further, certain industries, such as critical infrastructure, hospitality, construction, manufacturing/food processing, and agriculture are more likely to receive NOIs.

Q: What can trigger an I-9 audit?

A: Audits often start from government tips by former or disgruntled employees. Federal investigations by agencies like Occupational Safety and Health Administration (OSHA), the DOL's Wage & Hour Division, or the DEA can also lead to a Notice of Inspection (NOI) based on findings from the initial investigation.

Q: Is the government required to provide a subpoena or warrant prior to an I-9 audit?

A: While no subpoena or warrant is required prior to an I-9 audit, a subpoena/production notice usually accompanies a Notice of Inspection ("NOI").

Q: What is an NOI?

A: An NOI, or Notice of Inspection, is a document that informs an employer that their I-9s will be inspected in an upcoming audit. Employers receive this notice with three days' notice before the inspection occurs. You should contact our office as soon as an NOI is received.

Q: Is the employer required to produce I-9s immediately?

A: No. An agent can deliver a Notice of Inspection (NOI), but unless there's a subpoena or warrant, employers aren't required to immediately provide information. Employers have the right to provide the I-9s within three business days.

Q: Can the government extend the three-day I-9 production time period?

A: Yes. While it is discretionary, most agents have historically been willing to grant extension requests.

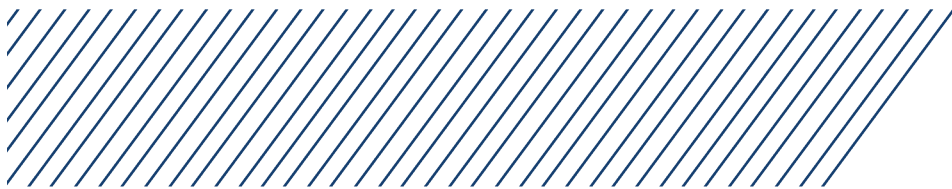
Q: What happens during an audit?

A: In an audit:

1. The government first serves an NOI requiring employers to produce I-9s and supporting documentation within three business days.
2. The government reviews I-9s for compliance and notifies employers of results in writing through notices such as:
 - **Notice of Inspection Results/Compliance Letter.** Confirms compliance.
 - **Notice of Suspect Documents.** Indicates unauthorized employees. The employer and employee can present additional documentation to demonstrate work authorization if they believe the finding is in error.
 - **Notice of Discrepancies.** Requests additional documentation. The employer should provide the employee with a copy of the notice and give the employee an opportunity to present additional evidence to ICE.
 - **Notice of Technical or Procedural Failures.** Identifies technical violations and allows corrections within ten business days.
 - **Warning Notice.** Identifies violations without monetary penalties.
 - **Notice of Intent to Fine (NIF).** Details violations and penalties. The employer has the opportunity to either negotiate a settlement with the government or request a hearing before the Office of the Chief Administrative Hearing Officer (OCAHO) within 30 days of receipt of the NIF. If the employer takes no action after receiving a NIF, the government will issue a Final Order.

Q: Will the government request more than I-9s and supporting documentation?

A: Yes, the NOI will request the production of additional records, typically: a list of current employees; Form 1099s; payroll records filed with the state and federal government; corporate data (e.g. names of owners and/or officers and their contact information, Articles of Incorporation, business licenses, names of staffing companies and/or contractors used); and whether the company is a participant in E-Verify.



Q: What type of penalties can be imposed on employers for I-9 compliance failures?

A: Each error on an I-9 form is considered a technical deficiency. Monetary penalties differ based on the number and type of errors, with higher penalties for repeat offenders or knowing employment of unauthorized workers. The government considers factors such as business size, good faith efforts to comply, and previous violations when determining penalties.

Q: Are there other consequences of I-9 noncompliance?

A: Employers found to knowingly hire or continue to employ unauthorized workers must cease the unlawful activity, and may be fined, criminally prosecuted, or subject to debarment by ICE, which means that the employer will be prevented from participating in future federal contracts and from receiving other government benefits.

Resources:

- [Virtual Verification Rules and Practices](#)
- [I-9 Handbook](#)
- [State E-Verify Guidelines](#)

Please [contact](#) Garfinkel Immigration Law Firm for further guidance or assistance with compliance audits.

This Q&A is intended for informational purposes only and does not constitute legal advice.

