



## **ICE AGE – BEST PRACTICE TIPS FOR I-9 COMPLIANCE**

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In the past couple of years, the Immigration and Customs Enforcement (ICE) has been escalating worksite enforcement efforts. Just in the past few months, ICE investigations have more than doubled. Last fiscal year, ICE conducted 1,360 audits, and opened 1,716 worksite investigations, and for the first seven months of the new fiscal year, ICE has already opened 3,510 investigations and initiated 2,282 I-9 audits. This increased enforcement has also been evident in the ICE “raids” that have made the national headlines. ICE raided ninety-eight 7-Eleven stores nationwide resulting in 21 arrests in January, and in June, the new Administration conducted one of the largest workplace raids, arresting close to 150 immigration violators at an Ohio plant. ICE described these operations as a warning to other companies employing unauthorized workers.

Until recently, employers were only marginally penalized for violations with civil penalties. Now the government is serious about punishing employers for knowingly hiring undocumented employees, via both civil and criminal penalties.

Workplace raids have led to negative publicity and workplace disruption, which underscores the importance of establishing appropriate hiring practices to avoid violations. Instituting proper I-9 compliance policies at a workplace is critical to employer’s protection. If any legal concerns arise, an attorney experienced in immigration should be contacted in advance for best effectiveness.

### **Inspection of Form I-9, Employment Eligibility Verification**

If ICE issues a Notice of Inspection (NOI), an employer will have a 3 day response window to produce hiring documentation. It is critical to respond to the NOI only after a careful review of all the records.

### **Best Practice Tips for I-9 Compliance**

The best practice tip to avoid violations is to establish a corporate compliance policy with respect to immigration laws before the audit, and follow the suggestions below:

- Check that all I-9 forms are correctly completed and stored for all the employees, including US citizens, green card holders and non-immigrants.
- Conduct I-9 self-audits regularly to be sure the records are complete and accurate.
- Develop and adhere to internal immigration policies that do not violate anti-discrimination rules.
- Designate an HR personnel member to be responsible for I-9 processes and procedures, to confirm I-9 completion and record keeping requirements.
- I-9 records must be kept on file for 3 years after hiring, or one year after the employee leaves your company, whichever is later. This form is not filed with the government, but must be readily available for government inspection. It is permissible and might be helpful to store the forms electronically.
- Institute a tracking system that tracks dates of employment authorization expiration, and helps with accurate I-9 data entry and data error interception.
- New employees located offsite must follow the same verification procedures – their I-9 compliance documentation must be reviewed in person by an authorized official.
- Prepare employees on what to do in the event of a government audit or a raid.

The best way to avoid non-compliance is to be audit ready before the audit is on the horizon - be proactive and be safe. All employers should get in the habit of conducting self-audits to ensure compliance and protect their business.

*Disclaimer: The information contained in this article is for general educational information only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation.*

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