



Webinar 5 - May 2026

I-9 Compliance, Immigration and Work Visas

WEBINAR OUTLINE

THE IMPORTANCE OF I-9 COMPLIANCE

RESPONSE PLAN IF ICE COMES TO A BUSINESS

AN OVERVIEW OF WORK VISAS

HYPOTHETICAL SCENARIO

HRtelligence TIPS

THE IMPORTANCE OF I-9 COMPLIANCE

What is the Form I-9

The Immigration Reform and Control Act (IRCA), enacted on November 6, 1986, requires employers to verify the identity and employment eligibility of their employees and sets forth criminal and civil sanctions for employment-related violations.

Section 274A(b) of the Immigration and Nationality Act (INA), codified in 8 U.S.C. § 1324a(b), requires employers to verify the identity and employment eligibility of all individuals hired in the United States after November 6, 1986.

8 C.F.R. § 274a.2 designates the *Employment Eligibility Verification* form (Form I-9), as the vehicle for documenting this verification.

I-9 Requirements

Employers must ensure all employees, including citizens and non-citizens, complete Form I-9 to verify identity and employment authorization by their first day of work.

Employers must complete Section 2 within three business days of hire, retain forms for specific periods (3 years after hire or 1 year after termination), and run regular audits to avoid penalties.

Key I-9 Compliance Essentials:

Timing: Section 1 (employee) is due on the first day of work; Section 2 (employer) is due within three business days.

Documentation: Employers must examine original documents (List A, or B+C) and record them. Documents must appear genuine and relate to the employee.

Retention: Keep forms for three years after the date of hire or one year after termination, whichever is later.

Reverification: If a worker's work authorization expires, you must reverify their authorization before the document expires, using Supplement B.

I-9 Inspection Process

The administrative inspection process is initiated with the service of a Notice of Inspection (NOI) upon an employer.

Employers receive at least three business days to produce the Form(s) I-9 requested in the NOI. In addition, Homeland Security Investigators generally request that the employer provide supporting documentation, which may include, but is not limited to, a copy of the employer's payroll, a list of active and terminated employees, articles of incorporation, and business licenses.

When an employer responds to a NOI by producing Form(s) I-9, HSI agents and/or auditors conduct an inspection of the Form(s) I-9 for compliance.

When technical or procedural failures are found, the employer receives at least 10 business days to make corrections.

An employer may receive a monetary fine for all substantive violations and uncorrected technical or procedural failures.

Completion of the I-9 Inspection Process

Upon completion of the inspection process, I will issue written notification of its findings through one of the following notices:

Notice of Inspection Results: Also known as a “Compliance Letter,” this notice is used to notify a business that it is in compliance with applicable employee eligibility verification requirements.

Warning Notice: Issued when substantive verification violations are identified, but there is an expectation of future compliance by the employer. However, a Warning Notice should not be issued in the following circumstances: (1) the employer was previously the subject of a Warning Notice or a Notice of Intent to Fine; (2) the employer was notified of technical or procedural failures and failed to correct them within the allotted 10-business day period; (3) the employer failed to prepare or present substantive violations; or, (5) there is any evidence of fraud in the completion of a Form I-9 (e.g., backdating) on the part of the employer. Companies that are served a Warning Notice may be subject to a follow-up NOI at a later date to ensure compliance.

Notice of Intent to Fine (NIF): May be issued for substantive violations, uncorrected technical or procedural failures, knowingly hire violations, and/or continuing to employ violations.

Employers found to have knowingly hired or continued to employ unauthorized aliens **must immediately cease the unlawful activity, with no exceptions or reprieve.** Failure to do so may result in civil fines and/or criminally prosecution.

Reclassification of I-9 Violations

On March 16, 2026, the U.S. Immigration and Customs Enforcement (“ICE”) issued guidance on how Form I-9 violations are classified. Specifically, errors that previously would be considered correctible technical violations are now reclassified as substantive violations subject to monetary penalties.

The newly issued guidance reclassifies the following common errors as substantive:

- Missing date of birth.
- Missing date of hire.
- Incorrect use of Spanish-language I-9 outside of Puerto Rico.
- Preparer and/or translator errors.
- Missing title of the employer or authorized representative.
- Failure to date sections 1 or 2.
- Failure to enter rehire date.

In addition, when using the remote verification procedure, failing to check the alternative procedure box in Section 2 or Supplement B indicating that remote inspection was used; and failing to be an active E-Verify participant at the time the alternative procedure was used, will now be considered substantive violations.

While technical or procedural errors can be corrected and employers selected for an ICE audit have 10 days to correct them, substantive violations cannot be corrected without risk of penalty.

The reclassification exposes employers to potential liability during an I-9 audit for these types of errors. As a result, it is recommended that employers conduct self-audits to ensure compliance with I-9 requirements.

Common Questions About I-9s

What To Do If an Employee Cannot Remedy Missing I-9 Documents

If an employee does not provide the required documents within the appropriate time frame, the employer should either terminate their employment or place them on a leave of absence based on the company's policy. Inform them that they may be able to continue work for the organization if they provide proof of eligibility to work in the U.S. by a certain date.

Documentation

Employers cannot require or prefer one document over others. If the documents appear genuine, relate to the person presenting them, are not expired, and are allowed according to the list of acceptable documents on the most current Form I-9, they should be accepted.

Audit I-9 Forms of Current Employees

Looking for Errors

Review the following information in each section of Form I-9. This list of I-9 violations can serve as a guide for reviewing individual I-9s but should not be considered a full list of violations. Common violations include:

- Name, address, or date of birth missing, incomplete, or incorrect.
- "Authorized to work until" date missing or incorrect
- Employee signature missing or dated after employee's first day of paid work
- Unacceptable or expired document recorded in Section 2.

- Missing key information for document, such as title, issuing authority, or expiration.
- Employer signature missing or dated more than three days after employee's first day of work.
- Name change or rehire date missing or incorrect in Supplement B.
- Reverification document information missing or incorrect.

Correct Errors

USCIS has guidance on how to physically correct I-9s. Work through each incorrect I-9, consulting USCIS resources for guidance on how to correct each error. General best practices for correction include:

- Ensure it clearly shows that a change is a correction.
- Use a differently colored ink from what was used on the form originally.
- Ensure changes are initialed (first initial, full last name) and dated with the current date.
- Never backdate.
- Never make a correction for the employee in Section 1 – they should address any issues directly.

RESPONSE PLAN FOR WHEN ICE COMES TO A BUSINESS

ICE can enter the public space of your workplace without any permission or warrant. A public space is where members of the public are generally permitted. For example, public spaces include the publicly accessible areas of supermarkets, retail stores, and restaurants, as well as building lobbies.

ICE cannot legally enter a private space of your workplace without a judicial warrant or the employer's permission. A private space is an employees-only area where members of the public are generally not allowed. This protection applies also to the private spaces in factories and on farms. Typical private spaces include private offices, breakrooms, storage rooms, and back-of-house kitchens. Indicators that a space is private may include posting of "Private" signs, locked doors, and policies that state that visitors and the public cannot enter those spaces without permission.

Frequently Asked Questions

Can an employer ask ICE to show identification?

Yes. If you are an employer, you can ask ICE agents to show identification. If they refuse, you can document their appearance or other identifying characteristics.

Can an employer ask if ICE has a judicial warrant?

Yes. If you are an employer, you can ask ICE if they have a judicial warrant: A judicial warrant is a warrant from a court that is signed by a judge. In some circumstances, a judicial warrant may be signed by a clerk in a federal district court. You can ask ICE agents for a copy of the judicial warrant. If the agents do not have a judicial warrant, you do not have to let them enter private spaces in your workplace.

Can ICE agents enter private spaces with an administrative (not judicial) warrant?

No. An administrative warrant does not give ICE the legal authority to enter a private space without the employer's consent. If ICE agents present an administrative warrant, you do not have to let them enter private spaces in your workplace.

If ICE shows an employer an administrative warrant seeking a certain person, the employer does not have to say whether a specific employee is working that day or take ICE agents to an employee named on the warrant.

Can ICE conduct I-9 audits at my workplace?

Yes. ICE does not need a judicial warrant or permission to conduct an I-9 audit. If ICE wants to see your I-9 forms, it must give you as the employer at least three days' notice. ICE may ask you to waive the three-day notice, but you as the employer can deny that request. You must allow ICE reasonable access for the audit.

What is a Judicial Warrant?

An immigration officer from ICE may not enter any nonpublic areas – or areas that are not freely accessible to the public and hence carry a higher expectation of privacy – *without a valid judicial warrant or consent to enter*. An immigration warrant is not the same as a judicial warrant; an immigration warrant does not authorize a search of nonpublic areas.

To be valid, a judicial warrant *must*:

- Be issued by a judicial court
- Be signed by a state or federal judge or magistrate
- State the address of the premises to be searched – make sure the stated address is *your address* or specifically pertains to *you*
- Be executed within the time period specified on the warrant

If the warrant includes all the above, then it is a valid judicial warrant and you must comply. However, if the judicial warrant is missing any of the above, lists a different address, or is being executed after the date specified on the warrant, then it likely is *not valid*, and you may (a) refuse to comply and (b) ask the agents to leave.

In contrast, an immigration warrant:

- Is issued by a DHS agency (look for a DHS seal, label, and/or the actual form number, i.e., DHS Form I-200, "Warrant for Arrest"; or Form I-205, "Warrant of Removal/Deportation")

- Is signed by an immigration officer or immigration judge
- Bears a title that will contain the word “Alien”
- States that the authority to issue the warrant comes from immigration law, such as the Immigration and Nationality Act and does *not* state that the issuing authority is a court

If the warrant has any of the above characteristics, it likely is an immigration warrant and thus does *not authorize the agent(s) to enter the premises*. You may (a) refuse to comply with the warrant and (b) ask the agents to leave.

Probable cause. Immigration authorities and other law enforcement officers may search other private areas and seize materials even without a warrant or outside of what is specified in a warrant if they have “probable cause” to believe that the search may reveal unlawful activity. An officer has “probable cause” if the facts and circumstances justify a reasonable person’s conclusion that unlawful activity (or evidence of unlawful activity) will likely be found in a particular place.

AN OVERVIEW OF WORK VISAS

Visa Options for Foreign Employees

Before you can sponsor a foreign worker, you will need to identify the correct visa type for their situation. Several visa options are available depending on the role, qualifications, and duration of employment. Selecting the correct visa early on can prevent delays and additional costs.

- **H-1B Visa:** For professionals in specialty occupations, typically requiring a bachelor’s degree or higher.
- **L-1 Visa:** For intra-company transfers. These are typically suitable for employees moving from a foreign branch to a U.S. office.
- **O-1 Visa:** For individuals with extraordinary ability in sciences, arts, education, business, or athletics.
- **E-2 Visa:** For investors and employees of businesses owned by treaty countries.
- **TN Visa:** For Canadian and Mexican professionals under the USMCA agreement.

Each visa comes with its own filing requirements, timelines, and limits. Being aware of these distinctions allows employers to plan strategically and avoid disruptions to their workforce.

Other options

- **Employment-based green cards (EB Visas):** Green cards give employees permanent residency, eliminating renewal headaches. However, the process can take years, and you’ll need to demonstrate that you attempted to recruit domestically first.

- **OPT and STEM OPT extensions:** Many international students begin their careers through Optional Practical Training (OPT), which lasts up to one year (or three years for STEM graduates).
- **J-1 (exchange visitor program):** The J-1 is designed for cultural and educational exchange, not long-term employment. It covers interns, researchers, teachers, residents or fellows, and trainees who come to the U.S. for short-term programs.

Employer Obligations and Compliance

Sponsoring a foreign worker doesn't just involve filing paperwork. As an employer, you will need to meet ongoing obligations to remain compliant with U.S. immigration law. Failing to comply can lead to penalties, fines, and restrictions on future sponsorship opportunities.

- **Labor Condition Application:** Before filing an H-1B petition, employers must submit a Labor Condition Application to the Department of Labor.
- **Wage requirements:** Employers must offer the prevailing wage for the position to avoid wage disputes.
- **Record keeping:** Accurate records of employee work status, visa documentation, and payroll must be maintained.
- **Non-discrimination:** Employers can't discriminate based on citizenship or immigration status in hiring or firing decisions.
- **Reporting changes:** Employers must report changes in employment terms, such as termination or relocation, to the appropriate authorities.

HYPOTHETICAL SCENARIO

ICE has entered XYZ Business wanting information regarding one of their employees. They ask to review XYZ Business's I-9s. ICE then asks to interview an employee.

INITIAL STEPS WHEN ICE AGENTS ARRIVE

- **Request Identification:** Ask the ICE agents to present their identification. This includes their badge and a valid warrant or subpoena, if applicable.
- **Ask for the Scope of the Visit:** Ask the agents for clarification on the purpose of their visit. ICE agents may be serving notice of a routine audit, executing a specific investigation, or seeking information about specific employees.
- **Obtain a Copy of the Warrant or Subpoena:** If the ICE agents have a warrant, subpoena, or court order, you are entitled to a copy. This document will specify which records they can access and which employees are being investigated. Employers are not required to grant ICE authority to enter nonpublic areas of the business to investigate or conduct an arrest without a valid judicial warrant. A valid judicial warrant will be signed by a US district court (or a state court)

judge, includes the location to be searched and the persons or items to be seized, and is dated and has been issued within the past 10 days.

WHAT EMPLOYERS ARE REQUIRED TO PROVIDE

Employers have certain obligations when it comes to complying with ICE requests. However, there are limitations on what ICE agents can demand and how they can gather information.

Access to the Premises

ICE agents may enter public areas of the business without permission. However, workers encountering agents in a public area still have the right to remain silent and to ask for an attorney. Employers may (but are not obligated to) tell employees that they can decide for themselves whether to speak with ICE. However, employers must not direct employees not to cooperate.

If ICE agents have a valid judicial warrant, they have the legal right to enter the premises and inspect documents as specified in the warrant. If they do not have a judicial warrant – or have only an administrative warrant – they do not have the legal authority to enter nonpublic areas, nor are employers obligated to allow them entry.

I-9 Forms and Employment Records

Other than enforcement actions, one of the most common reasons ICE agents visit businesses is to inspect I-9 forms to verify the identity and employment authorization of employees. Under federal law, employers must maintain I-9 forms for all active and some terminated employees and provide them for inspection upon request by authorized government officials, including ICE agents.

A Form I-9 investigation is initiated when ICE serves the employer a Notice of Inspection (NOI). Employers have at least three business days to produce the I-9 forms and supporting documents. Employers should not provide ICE agents access to physical spaces, nor should they produce any material immediately upon the NOI being served.

WHAT EMPLOYERS SHOULD NOT DO

While employers are required to cooperate with ICE agents to a certain extent, there are also several things they should avoid doing during an ICE visit:

- **Do Not Destroy Documents:** Destroying or tampering with documents requested by ICE can result in criminal charges. Employers must preserve relevant documents and records that are the subject of a warrant, subpoena, or audit. Further, employers may not destroy records in anticipation of a request for

them from ICE or another law enforcement authority even if the request has not yet been made

- **Do Not Provide False Information:** Providing false information to ICE agents is illegal and can result in severe penalties, including criminal charges.
- **Do Not Discriminate Against Employees:** Employers must avoid retaliating against employees who are subject to an ICE investigation. It can be unlawful to discriminate or take adverse actions against workers based on their immigration status. This includes firing, harassing, or penalizing employees who are questioned by ICE agents.

WHAT EMPLOYERS SHOULD DO AFTER THE VISIT

Once ICE has completed its investigation, employers should take the following steps:

- **Document the Visit:** Keep a detailed record of the visit, including the names of the ICE agents, the date and time of the visit, the purpose of the visit, and any documents or information that were provided to the agents. If ICE arrests any workers, ask the ICE agents where they are being taken, as this information may be helpful to the worker's family and lawyer in locating the worker and defending the charge. If a search warrant is executed and records are seized, request a copy of the property receipt and search warrant inventory log prepared at the conclusion of the search.
- **Review I-9 Compliance:** After the inspection, it is a good idea to review I-9 records and ensure that they are complete and compliant with federal requirements. Consider conducting a self-audit, ideally under privilege. If there are deficiencies, take immediate steps to address them. Review internal I-9 processes to ensure they are compliant.



Conducting periodic internal I-9 audits is an effective way to identify errors and assess your compliance with employment eligibility verification requirements. Internal audits are a good way to see if you have any practices or issues that could trigger an I-9 audit.

Audits can cover both electronic and paper forms. You can choose to review all Forms I-9 or a sample based on neutral and non-discriminatory criteria.

It is recommended that employers have a response plan in place in the event ICE were to arrive at the workplace. As part of the response plan, a designated manager from your internal Rapid Response team should be appointed to calmly interact with ICE officials on-site, equipped with instructions and legal contacts.

To reduce risk, HR should follow these best practices:

1. Implement consistent policies and procedures for completing and verifying I-9 forms.
2. Regularly audit I-9 forms to catch errors early.
3. Use electronic I-9 systems to streamline the process and reduce human error.
4. Regularly train Form I-9 Agents on proper I-9 procedures, ensuring they stay updated on the latest regulations.