

Avoid the Million Dollar Mistake - Five I-9 Immigration Compliance Tips That Can Save You Time, Money, and Trouble

Labor & Employment Law Update

By Jacqueline Lentini McCullough on December 2, 2022

In 1986, the Reagan administration instituted use of the I-9 Immigrant form, requiring employers to verify their employees' identity and eligibility to work. While the concept was simple and the current form was meant to be simple, compliance has been anything but simple and I-9 forms can feel like a minefield.

Noncompliance can be a very expensive mistake for companies and organizations – even small ones – with fines ranging from thousands of dollars to millions of dollars and subjecting them to years of monitoring. In a recent case, a staffing company was fined \$1.5 million in penalties, despite only having 50 permanent full time employees. However, that pales in comparison to the largest fine levied against an employer of \$95 million...but it knowingly accepted falsified documents from undocumented individuals.

It's not just intentional discrimination that gets companies in trouble too. Rather accidental noncompliance with I-9 forms is common. According to one study of 1.5 million paper I-9 forms, 76% of them had at least one fineable error, and on average had 3.1 errors. With U.S. Immigration and Customs Enforcement (ICE) fines costing as much as \$2,507 per employee for a simple paperwork violation, even if the employee is legally authorized to work in the U.S. What employers must understand is that I-9 compliance is NOT something to be overlooked or taken lightly.

5 Ways Accidental Noncompliance Happens:

1. **An employee forgets to date a form.** Forms must be filled out within 3 days of hire.
2. **Helpful Human Resources employees prepopulate form responses** for foreign-speaking employees to make things easier for them. Employees must fill out the form themselves.
3. **No one reviews the I-9 form in person for remote employees.** In-person review is a requirement.

4. **The company keeps copies of too many verification documents or refuses to accept valid documentation and instead requires a specific document.** This can raise questions of unfair burden on the employees and get a company into similar trouble as those companies fined \$1.5 million and \$95 million.
5. **The company fails to have employees fill out I-9 forms.**

Failing to make sure I-9 forms are properly filled out will not only trigger fines, but it increases the scrutiny during an audit and ratchet ups the penalty because there will be a fine for each employee who lacks a form.

5 Easy Compliance Tips That Can Save You Time, Money, and Trouble

Here are 5 things you can do to comply with proper I-9 form completion and reduce your risk of fines:

1. **Send I-9 forms to new employees in advance of their first day of work.**
Make clear you need to collect the form and see their documentation within their first 3 days of work.
2. **Set an appointment time** to collect the form and see the documentation.
3. **Date the form!** The I-9 form has to be done within 3 days of hire.
4. **Train your human resources staff to know what are valid documents, that they cannot ask for a specific document if a valid one is presented and, no matter how much it could streamline the process, they cannot fill out the form for the employee.**
5. **Ask experienced legal counsel to audit your I-9 forms to ensure they comply** and to highlight errors so you can fix them. The cost of an audit is a fraction of the fines you could incur if ICE decides to audit your company.

As a final warning, this is not an issue to put off. In another study, it was reported that based on recent trends the chance of an employer being audited by ICE within the next decade is 95%. As such, it is important for employers to consult with experienced immigration law counsel to ensure that they are in compliance and in dealing with these “meant to be simple” I-9 compliance issues.

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