

Are You Ready for an I-9 Audit or an ICE Raid?

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WHAT WE WILL COVER

- Increased I-9 Scrutiny
- I-9 Basics
- Correcting I-9s
- Electronic Storage of I-9s
- I-9 Best Practices
- Ground Rules for an ICE Audit or Raid

INCREASED I-9 SCRUTINY

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ENFORCEMENT THROUGH ICE WORKSITE AUDITS

- In 2014, ICE conducted 1,320 worksite audits, resulting in more than \$8.5 million in fines and 172 employer arrests
- As for the size of the employers, more than half were small - under 100 employees

ENFORCEMENT THROUGH ICE WORKSITE AUDITS

- Industries targeted for inspection by ICE (recent cases reported by OCAHO)
 - Construction
 - Hospitality
 - Food Preparation/Manufacturing
 - Health Care
 - Retail

PENALTIES FOR I-9 VIOLATIONS

- I-9 paperwork violations – civil penalty of \$110 to \$1,100 per violation
- I-9 document abuse (asking for more documents than required) – civil penalty of \$375 to \$3,200 per violation
- Knowingly hiring or continuing to employ a person not authorized to work in the US – civil penalty of \$275 to \$2,200 per violation, for the first offense
- Knowingly engaging in a pattern or practice of hiring or continuing to employ persons unauthorized to work – criminal penalty of \$3,200+ per violation and up to 6 months imprisonment
- See chart - <http://www.ice.gov/news/library/factsheets/i9-inspection.htm>

PREVENTING COMPANY LIABILITY

- Train Human Resources Managers or other individuals responsible for completing the Form I-9 on how to properly complete the form
- Consider developing a comprehensive I-9 policy
- Periodically audit I-9s (internally or by using outside counsel) and correct any mistakes

I-9 BASICS

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I-9 BASICS

I-9s Are Required For Every Employee

- Employers must have one for all employees hired since November 7, 1986
- An I-9 is NOT required for
 - Employees hired before November 6, 1986
 - Independent contractors
 - Individuals not physically working on U.S. soil

I-9 BASICS

- Must use new two page I-9 form as of May 7, 2013
 - Two page form can be stored double sided or as two pages
 - Two new fields – employee email and phone number (optional)
 - Form states “the instructions must be available during completion of this form
- Employee completes section 1 on or before first day of hire
- Employer has three business days, after the day of hire, to complete section 2 and examine original documents (four day rule)
- Employer, or its agent, reviews original documents and completes Section 2
- Must not hire persons who lack valid work authorization
- Cannot use a subcontractor relationship (staffing company or independent contractor) to hire someone you have reason to believe is not work authorized

A FAIRLY COMPLEX LITTLE FORM

70 pages... for a... two page form



Handbook for Employers

Instructions for Completing Form I-9
(Employment Eligibility Verification Form)



M-274 (Rev. 01/05/11) N

Employment Eligibility Verification Form I-9
Department of Homeland Security
U.S. Citizenship and Immigration Services

Section 1. Employee Information and Attestation (Employee must complete and sign Section 1 of Form I-9 no later than the first day of employment, but no later than 90 days after the date of hire.)

Section 2. Employer Attestation (Employer must complete and sign Section 2 of Form I-9 no later than the first day of employment, but no later than 90 days after the date of hire.)

Section 3. Additional Information (Employer must complete and sign Section 3 of Form I-9 no later than the first day of employment, but no later than 90 days after the date of hire.)

Section 4. Signature and Date (Employer must complete and sign Section 4 of Form I-9 no later than the first day of employment, but no later than 90 days after the date of hire.)

FILLING OUT THE I-9 – SECTION 1

Section 1. Employee Information and Attestation <i>(Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)</i>				
Last Name (Family Name) Doe	First Name (Given Name) John	Middle Initial A	Other Names Used (if any) N/A	
Address (Street Number and Name) 123 Main Street	Apt. Number 1	City or Town Washington	State DC	Zip Code 20000
Date of Birth (mm/dd/yyyy) 01/01/1960	U.S. Social Security Number 000-00-0000	E-mail Address johndoe@email.com	Telephone Number (202) 123-4567	

- Every new hire must fill out Section 1 himself/herself – handwritten is OK
- Avoid typing Section 1 for the employee – if do, then should complete translator certification as the employee was assisted in the process
- Email, telephone, and SSN are optional
- Common errors include date of birth matching today's date
- "N/A" is preferred in any open boxes

FILLING OUT THE I-9 – SECTION 1 (CONT.)

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States *(See instructions)*
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) 02/28/2015. Some aliens may write "N/A" in this field. *(See instructions)*

For aliens authorized to work, provide your Alien Registration Number/USCIS Number **OR** Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: 1 2 3 4 5 6 7 8 9

OR

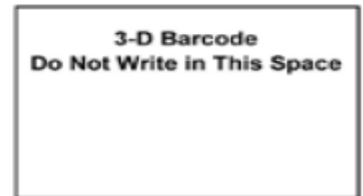
2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. *(See instructions)*



- Employee selects his/her status, but HR can provide guidance – “green card holders” are not Aliens Authorized to Work, for example

FILLING OUT THE I-9 – SECTION 1 (CONT.)

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States *(See instructions)*
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) 02/28/2015. Some aliens may write "N/A" in this field. *(See instructions)*

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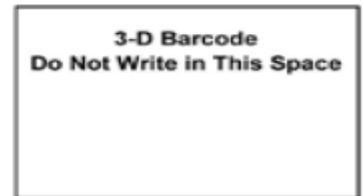
2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. *(See instructions)*



- Make sure lawful permanent residents (“green card holders”) include either their A Number, or the USCIS number on their status

FILLING OUT THE I-9 – SECTION 1 (CONT.)

Signature of Employee: <i>John A. Doe</i>	Date (mm/dd/yyyy): 06/30/2013
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Preparer and/or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Signature of Preparer or Translator: <i>Jane Doe</i>	Date (mm/dd/yyyy): 06/30/2013		
Last Name (Family Name) Doe	First Name (Given Name) Jane		
Address (Street Number and Name) 123 Main Street	City or Town Washington	State DC	Zip Code 20000

- Employees must sign and date the I-9
- Watch out for employees including their date of birth in the date section next to their signature, which is an error
- If you assist the employee in preparing the I-9, like typing up the form with their information, or writing on the form because they have a disability, be sure to complete the translator section
- ICE Officers looks for handwriting differences between Sections 1 and 2

FILLING OUT THE I-9 – SECTION 2

Employee Last Name, First Name and Middle Initial from Section 1: Doe, John A				
List A	OR	List B	AND	List C
Identity and Employment Authorization		Identity		Employment Authorization
Document Title: EAD		Document Title:		Document Title:
Issuing Authority: DHS/USCIS		Issuing Authority:		Issuing Authority:
Document Number: XXX1234567891		Document Number:		Document Number:
Expiration Date (if any)(mm/dd/yyyy): 02/28/2015		Expiration Date (if any)(mm/dd/yyyy):		Expiration Date (if any)(mm/dd/yyyy):
Document Title:				

- Let the employee select what they want to use – List A OR List B and List C documents
- If presented with many different documents by the employee, be sure not to fill out List A, B and C
- Can copy and attach only the documents used to complete the I-9, not all docs received

I-9 DOCUMENTATION – IS IT GENUINE?

- Employer reviews new hires' original documents to ensure they “reasonably appear on their face to be genuine and they relate to the person presenting them”
- Must not over document or discriminate during the I-9 process
- ICE handbook - <http://www.worksite-compliance.com/library/files/M-396.pdf>
- **Over documentation**
 - Generally – if attach documentation for one then MUST do it for all
 - NEVER request specific documents from an employee – he/she must decide what can/will provide
- **Discrimination**
 - Most litigation in the I-9 arena had been where employers use the I-9 to exclude workers who are eligible for employment – national origin discrimination
 - Employers are only required to review original documents for obvious forgeries, since most employers do not know what a bona fide document looks like; color copies of many acceptable documents – ICE Handbook

USING AGENTS

- How To Use Agents For Remote Hires
 - Who completes Section 2? “Employer”
 - Can be an agent of the employer - - sister company, onsite customer, notary public, or any unrelated neutral 3rd party
 - Person completing Section 2 must be the individual who examined the original documents from the employee
 - M-274 confirms that the employer is “still liable for any violations in connection with the form or the verification process”
 - On the I-9 - e.g. Fred Smith, Agent of ABC company, and HQ address

FILLING OUT THE I-9 – RE-VERIFICATION

Section 3. Reverification and Rehires <i>(To be completed and signed by employer or authorized representative.)</i>			
A. New Name <i>(if applicable)</i> Last Name <i>(Family Name)</i> First Name <i>(Given Name)</i>		Middle Initial	B. Date of Rehire <i>(if applicable)</i> <i>(mm/dd/yyyy)</i> :
Doe Jason		A	03/28/2015
C. If employee's previous grant of employment authorization has expired, provide the information for the document from List A or List C the employee presented that establishes current employment authorization in the space provided below.			
Document Title:	Document Number:	Expiration Date <i>(if any)</i> <i>(mm/dd/yyyy)</i> :	
EAD	XXX1987654321	06/30/2019	
I attest, under penalty of perjury, that to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.			
Signature of Employer or Authorized Representative:	Date <i>(mm/dd/yyyy)</i> :	Print Name of Employer or Authorized Representative:	
<i>Alice Smith</i>	03/28/2015	Alice Smith	

- Re-verification is needed whenever the work status of an alien who is authorized to work will expire – on or before status expires (unless outside the US)
- All re-verification must be done on the latest version of the I-9 form
- US citizens and LPRs generally won't need re-verification
- This section should also be used when a name change has occurred
- See the M-274 handbook for the rules regarding rehires

CORRECTING AN I-9

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HOW TO CORRECT AN I-9

- Only the employee can correct Section 1 of the I-9
- Any employee of the company can edit Section 2 of the I-9, as long as he/she can reasonably attest to the information
- Always use a different colored pen, and initial and date next to each change
- If the information is correct, but simply in the wrong location, draw an arrow to the proper location and initial and date the change
- If unsure how to correct an I-9, can complete a new I-9
- If you are missing an I-9 for an employee, complete one immediately. Insert the actual date completed, do not back date
- Consider whether to attach a memo to the corrected I-9 explaining the purpose of the correction

Helpful resource: www.uscis.gov/i-9-central

CORRECTING I-9S - EXAMPLE

Section 1. Employee Information and Attestation (Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.)				
Last Name (Family Name) Auxier		First Name (Given Name) Christine		Middle Initial N
Address (Street Number and Name) 5315 E Allen Rd		Apt. Number	City or Town Howell	State MI
Date of Birth (mm/dd/yyyy) 1-2-1975		U.S. Social Security Number 377-15-9179	E-mail Address cnauxier@oakland.edu	Zip Code 48855
			Telephone Number 517-552-3043	

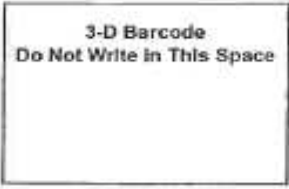
I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____
- OR**
2. Form I-94 Admission Number: _____



If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____
Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

Signature of Employee: Christine Auxier	Date (mm/dd/yyyy): 6/9/14
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KK
9-18-14

DESTROY LEGACY I-9S

- An employer can (and should) destroy I-9s of former employees – three years after date of hire or one year after employment ends – whichever is longer

ELECTRONIC I-9S

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ELECTRONIC STORAGE OF I-9S

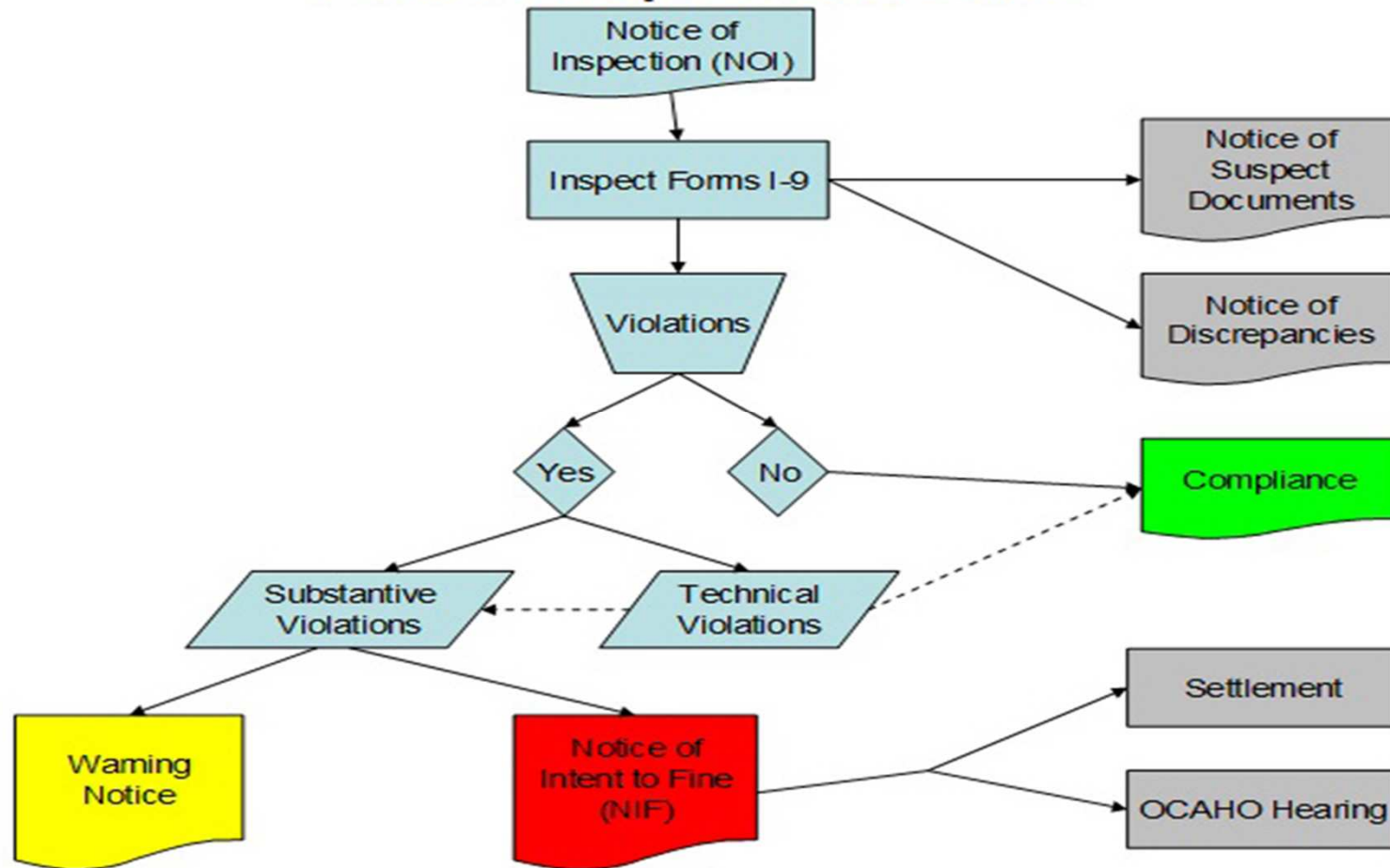
- You can store I-9s electronically, but need controls for the integrity, accuracy and reliability for the storage system including
 - Controls for preventing tampering or unauthorized access
 - Accidental altering and/or deterioration of the stored I-9s
 - Inspection and quality assurance procedures
 - A retrieval system that includes indexing capabilities
 - The ability to print paper copies
 - Protect against information loss and to provide for backup
 - Employees must be trained in the security system
 - When reviewing I-9s, a permanent record must be created to identify the person who accessed the record
- Need to be able to document the entire system – third party software provider the best idea

GROUND RULES FOR ICE AUDIT / RAID

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ICE INSPECTION PROCESS

Form I-9 Inspection Process



BASIC I-9 AUDIT GROUND RULES

- Below are some basic ground rules in the event of an I-9 audit
 - The ICE letter will give you three business days to prepare for ICE officers to come to your office and pick up the original I-9s. ICE may contact you prior to the letter by phone to set up the timing of the inspection
 - ICE may give you a small extension for some of the information that is needed (payroll records)
 - Can you review your I-9s, and make copies so they can take the originals, in three days? Are your people trained to do it?
 - Do not destroy any documents, including attachments, old I-9s, or any company records
 - Hire counsel

BASIC ICE RAID GROUND RULES

- Below are some basic ground rules in the event of an ICE raid
 - When the officer arrives, you may ask to see a warrant
 - Never obstruct, be polite, smile
 - Does your Receptionist (or branch employees) know what to do?
 - Do not destroy any company documents
 - Hiring local counsel is critical. Hiring criminal counsel may be necessary

QUESTIONS?



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THANK YOU!



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LEGAL DISCLAIMER

NOTE: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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