

Employer Alert: ICE Worksite Enforcement Is Poised to Increase Dramatically - Employers Should Audit Their I-9s NOW!

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Employers should prepare for a substantial increase in ICE worksite enforcement, which appears imminent! Two developments are now converging: first, ICE has revised its Form I-9 inspection guidance in a way that appears to reclassify many errors previously treated as correctable “technical or procedural” violations as “substantive” violations subject to immediate and severe penalties; and second, the federal government has significantly increased funding for immigration enforcement through the “One Big Beautiful Bill Act,” including major funding specifically for ICE worksite enforcement.

For years, employers generally understood that certain I-9 paperwork mistakes could be corrected if discovered during an ICE inspection, provided the employer acted in good faith and corrected the deficiency within the required time. That framework was grounded in INA §274A(b)(6), the 1997 Virtue Memorandum, and later OCAHO and federal court decisions recognizing the distinction between “technical” and substantive violations. The newly revised ICE fact sheet, however, appears to narrow that protection significantly, basically eliminating almost all ‘technical’ violations.

The revised ICE guidance reportedly reclassifies several common I-9 errors as substantive violations, including missing employee date of birth, missing employee signature date, missing employer representative title, missing date of hire, missing employer signature date, incomplete preparer or translator information, and certain missing document information in Sections 2 and Supplement B. Most notably, the revised guidance appears to eliminate the longstanding carve-out under which missing document information could be treated as technical if the employer retained a legible copy of the document with the I-9.

ICE also appears to be treating certain process-based failures as substantive violations, including improper use of the Spanish-language Form I-9 outside Puerto Rico, failure to check the alternative procedure box when remote document examination is used, failure to be an active E-Verify participant when using the DHS-authorized remote examination procedure, and failures involving electronic I-9 completion, retention, security, reproduction, or electronic signature requirements. Since multiple violations result in exponentially higher fines, the net effect is that civil monetary exposure for business is now much greater than ever.

At the same time, ICE now has far more enforcement resources. The One Big Beautiful Bill Act has been reported to provide approximately \$29.9 billion for ICE enforcement and deportation operations, including funding to hire additional ICE officers, modernize enforcement operations, and expand the government’s immigration enforcement capacity. This very clearly includes worksite enforcement efforts, which have been cited as a priority right now. Immigration law commentators have specifically warned that this funding is expected to support increased worksite enforcement, including I-9 audits and inspections.

The practical takeaway is straightforward: employers should not assume that errors historically viewed as “minor,” “technical,” or “correctable” will be treated that way in the next ICE inspection. In the current enforcement climate, even routine I-9 mistakes may carry substantially greater financial and legal risk.

Employers should act now by conducting privileged internal I-9 audits, correcting errors where legally permissible, documenting good-faith remediation efforts, reviewing remote verification procedures, confirming E-Verify compliance where applicable, and ensuring that electronic I-9 systems meet regulatory requirements.

Employers should also train human resources personnel and managers responsible for onboarding so that new I-9s are completed accurately and consistently.

This is not a time for complacency. With ICE narrowing the definition of correctable technical violations and Congress providing substantial new funding for immigration enforcement, employers should anticipate a severe increase in I-9 audits, Notices of Inspection, civil penalties, and broader worksite enforcement activity in the very near future.

Our Immigration/Worksite Enforcement and Compliance team stands ready to provide training, internal audits, and review for companies of any size. If you are an employer and have questions about I-9 practices or worksite enforcement preparedness, contact [Alan J. Pollack](#) or a member of our [Employment Law Team](#).

Attorney

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