

IMMIGRATION COMPLIANCE ISSUES FOR EMPLOYERS

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I. RECENT DEVELOPMENTS IN IMMIGRATION LAW

Over the last year, employers have witnessed a major increase in the volume of worksite enforcement actions. The increase in audit activity has primarily arisen from two separate areas associated with immigration law: H-1B petitions and I-9/employment verification audits.

A. H-1B Visas and H-1B Audit Updates

H-1B Visas

H-1B visas are those visas that are normally issued to professionals and other individuals employed in a “specialty occupation” that normally requires a bachelor’s degree or higher in a specific academic area for its performance. Each year only a limited number of H-1B visas are issued, based on a quota set by Congress. Currently, the allocation is 65,000 for the regular quota (less the Free Trade Visas specifically set aside for Chile and Singapore), resulting in 58,200 H-1B visas regularly available per year.¹ The cap does not include an additional 20,000 visas set aside for students with masters degrees or higher from a U.S. university. In many recent years, the quota has been hit on the first day of filing (April 1st), due to the great demand by U.S. employers for the limited number of H-1B visas available in each fiscal year.

As of December 21, 2009, U.S. Citizenship and Immigration Services (“USCIS” or “CIS”), the government entity that processes H-1B visa petitions, had received enough petitions to meet both the 65,000 and 20,000 allotments of H-1B petitions for the 2010

¹ The numerical limit on H-1B visas is commonly referred to as the “H-1B cap.”

Fiscal Year. H-1B Petitions can still be filed on behalf of those applicants who have already been counted against the H-1B cap. These petitions include:

- Those applicants seeking to extend the time on their current H-1B visa in order to remain working in the U.S.
- Those applicants seeking to change the terms of employment for their current H-1B visa.
- Those applicants who currently hold an H-1B visa and are seeking to change employers.
- Those applicants seeking to work concurrently in a second H-1B occupation.

The new filing window for H-1B petitions for the coming fiscal year (FY11) is April 1, 2010. The earliest that an individual may begin working on an approved H-1B petition filed for FY11 is October 1, 2010.

H-1B Fraud Prevention and LCA Enforcement Efforts

1. USCIS Efforts

Last fall, the USCIS Office of Fraud Detection and National Security (FDNS) commenced an assessment of the H-1B program which including making unannounced site visits to H-1B employers at their principal place of business and/or at the work location listed on the H-1B petition. FDNS contends that a subpoena is not necessary because CIS regulations allow for broad investigations relating to H-1B petitions and because the H-1B employer has given advance consent for the visit as a result of filing the I-129 petition. In fact, the instructions for the Form I-129 (which is completed as part

of the H-1B application process), specifically state that verification methods may include unannounced site inspections.

During a site visit, the employer should be able to verify information contained in a specific H-1B petition. In addition, FDNS may inquire as to certain company information listed on the petition or relating to the veracity of the petition, such as the type of business, locations, and number of employees. In addition, FDNS may request copies of recent Federal Tax Returns, quarterly wage reports, and other information to prove that the H-1B sponsor is a legitimate business. The employer should also be able to provide specific information about the H-1B employee's job title, duties, work location and rate of pay. Documentation such as recent paystubs and W-2s may also be requested.

Upon notification that an FDNS agent is present, the designated company official who signed the H-1B petition or a designated Human Resources representative should meet with the officer. During this time, the documentation listed above should be available for review. The H-1B employee and, possibly his or her colleagues, will also normally be asked to meet with the FDNS officer to confirm that all the information on the petition is correct. FDNS may also ask for a tour of the facility.

If any information is found during the site visit that contradicts the information provided in the H-1B petition, the H-1B petition and visa (if already approved) will most likely be revoked; if the H-1B petition is still pending with USCIS, it will be denied. Additional criminal sanctions against the employer (or the individual who signed the petition), might also be issued by FDNS. If questions or concerns arise at the time of or

following an inspection, it is strongly advised that the H-1B employer contact an attorney or seek counsel that is familiar with immigration compliance.

On January 11, 2010, USCIS Director Alejandro N. Mayorkas released a statement indicating that the organizational structure of the agency has been realigned to improve efficiency. The most significant changes include the creation of the following new directorates: the Fraud Detection and National Security Directorate, the Customer Service Directorate, the Service Center Operations Directorate and the Field Operations Directorate. According to Director Mayorkas, this change “reflects [the agency’s] prioritization of its anti-fraud and national security responsibilities and will bring greater focus to them.” In short, employers may expect heightened H-1B scrutiny and increased site visits.

2. Department of Labor Efforts

The U.S. Department of Labor (DOL) also has enforcement authority for the H-1B program. DOL’s efforts center on the Labor Condition Application (LCA) that is filed by employers with the DOL as part of the H-1B process. On the LCA, employers must agree to employ the H-1B worker under the same terms and conditions with regard to wages and benefits as those regularly imposed on U.S. workers who are similarly employed in the same area of intended employment and also attest that there is no strike or lockout in the occupational classification at the place of employment and that appropriate notice has been provided to the bargaining representative (if any) or that notice of the filing of the LCA was provided at the worksite for a specific period of time. Documentation backing up these attestations must also be kept in a “public access file”.

Employers who fail to comply with the attestations made on the LCA or who are found to have willfully violated the LCA attestation requirements may be assessed civil money penalties and may also be subject to additional administrative penalties. Information concerning the LCA program is attached.

B. I-9/Employment Verification and I-9 Audit Updates

On November 6, 1986, the Immigration Reform and Control Act required employers to verify the identity and employment eligibility of their employees and created criminal and civil sanctions for employment related violations. The Form I-9 is the official means used by employers to document this verification.

On April 3, 2009, a revised Form I-9 was issued. The new form includes a reduced list of documents that are acceptable forms of identification and also prohibits the acceptance of expired documents as evidence of employment eligibility. In addition, employers must use the new form for re-verification of any existing employees. A copy of the new Form I-9 and accompanying instructions is attached.²

1. Increased Enforcement Activity

In April 2009, the U.S. Immigration and Customs Enforcement (ICE) agency announced an increased effort and strategy to prioritize the criminal penalties imposed on employers (including supervisors, managers, owners and others) who knowingly hire undocumented workers. In this notice, ICE advised that “absent exigent circumstances, ICE offices should obtain indictments, criminal arrest or search warrants or a

² USCIS has announced that it expects to again revise the Form I-9 in 2010 and the new form will contain additional revisions to the accepted list of documents used for identification purposes. The new form is supposed to be published during the last half of 2010.

commitment from the U.S. Attorney's Office to prosecute the targeted employer before arresting employees for civil immigration violations." To advance criminal cases or in the absence of sufficient evidence to support a criminal charge, ICE also indicated its intention to support the imposition of civil fines and other available penalties against employers violating their I-9 obligations.

As an example of its increasing efforts to perform comprehensive I-9 audits, in November 2009, ICE announced that it had issued Notices of Inspection (NOIs) to 1,000 employers throughout the U.S. advising that ICE would be conducting an audit of their hiring records to determine compliance with employment eligibility verification laws. While the names of the employers were not released, ICE did indicate that the companies were those employers who had connections to public safety and national security. This enforcement initiative followed shortly after the auditing of 654 businesses suspected of using illegal labor in July 2009, which ultimately resulted in fines of more than \$2.3 million. These actions have led many to speculate that the number of I-9 audits will only increase in 2010.

2. I-9 Audit Procedure and Penalties

ICE initiates I-9 inspections by service of a Notice of Inspection (NOI) upon an employer compelling production of the Forms I-9. ICE typically allows 3 business days to present the Forms I-9. Supporting documentation, such as a copy of the payroll, list of current employees, and evidence of the legitimacy of the business, may also be requested.

After an audit, ICE agents or auditors may take one or more of several actions, including (among others) issuing a warning, a Notice of Intent to Fine or a Notice of

Technical or Procedural Failures. In the latter case, ICE provides an employer 10 business days to make corrections for technical or procedural violations. After that time, an employer may receive a monetary fine for all substantive and uncorrected technical violations. Employers who are ultimately determined to have knowingly hired or continued to employ unauthorized workers will be required to cease the unlawful activity, may be fined, and in certain situations, may be prosecuted criminally. In those latter situations, the employer may also be subject to debarment, which means that the employer may be prevented from participating in future federal contracts or receiving other government benefits.

Monetary penalties for knowingly hiring and continuing to employ violations range from \$375 to \$16,000 per violation. Penalties for substantive violations typically range from \$110 to \$1100 per violation. ICE has published a release setting forth its method for calculating fines in relation to I-9 violations. Fines are issued according to the severity of the errors and the percentage of problems. ICE will consider five factors when determining the fine: the size of the business, the employer's good faith efforts to comply with the law, the seriousness of the violation, whether the violation involved unauthorized workers, and any history of previous violations by the employer. A copy of a recent ICE press release containing the current fine schedule is attached.

C. E-Verification (E-Verify) Updates

E-Verify is a free web-based system that electronically verifies the employment eligibility of newly hired employees. The system electronically compares employee information taken from the Form I-9 and information found in the databases of the SSA

and the Department of Homeland Security (DHS). The E-Verify program has been in effect since 2007 and many updates and changes continue to be made so that the program can run more efficiently and accurately. Recent E-Verify program updates include the following:

- E-Verify now includes naturalization data to help confirm the citizenship status of naturalized U.S. citizens.
- E-Verify Photo Matching is available to certain agents and users and allows employers to check photos against those stored in the DHS system.
- For those employees who are in F-1 student status and are eligible to work for a U.S. employer for 12 months with Optional Practical Training (OPT), an additional 17 months of OPT status may be available under certain conditions. In order to receive this 17 month extension, the applicant must have completed a science, technology, engineering or mathematics (STEM) degree. Confirmation of this eligibility can be made through the E-Verify program.

If an employer uses the E-Verify program, it must post a notice to that effect. E-Verify must be used for new hires only, regardless of national origin or citizenship status. E-Verify can only be used after the completion of the Form I-9 and cannot be used to pre-screen applicants. If an information mismatch notice is received, the employer must provide the employee with information on how to challenge the mismatch if so desired. The employer must give the employee eight (8) federal government working days to

make the challenge and the employer cannot take any adverse action (such as firing, suspension or withholding pay) during this time.

The E-Verify User Manual for Employers can be found at: http://www.uscis.gov/files/nativedocuments/E-Verify_Manual.pdf. Employers may enroll in E-Verify online at: <https://e-verify.uscis.gov/enroll/StartPage.aspx?JS=YES>.

Currently, the E-Verify program is voluntary for most employers, but DHS continues to fully support the system, especially in the wake of the recent dismissal of the No-Match regulation (discussed below). Several states have passed laws requiring either the mandatory use of E-Verify by all employers or requires state agencies to use the E-Verify system, including Arizona, Arkansas, Colorado, Georgia, Idaho, Kansas, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Rhode Island, South Carolina and Utah. Additional states are phasing in the E-Verify requirement and are looking to pass regulations to make participation in the E-Verify program mandatory for employers. If an employer is unsure whether its state requires the use of the E-Verify program, it should contact an attorney or the state's Department of Labor. It should be noted that in instances where E-Verify is required, employers are only required to use the system for any new hires; only federal contractors are permitted to use the system to verify the status of existing employees.

On September 8, 2009, a regulation went into effect requiring all federal contractors and some subcontractors to use the E-Verify system. The new rule states that federal contracts must include a clause obligating the government contractor to use the E-Verify system for new hires and all existing employees. For further information about

this regulation, we recommend referring to the E-Verify User Manual for Federal Contractors at:

http://www.uscis.gov/USCIS/E-Verify/Federal%20Contractors/FEDK%20Employer%20Manual%209.3.09_FINAL.pdf.

The Supplemental Guide (issued on October 21, 2009) can be found at: [http://www.uscis.gov/USCIS/Controlled%20Vocabulary/Native%20Documents/Supplemental%20Guidance%20for%20Federal%20Contractors%20090109%20FINALa\(1\).pdf](http://www.uscis.gov/USCIS/Controlled%20Vocabulary/Native%20Documents/Supplemental%20Guidance%20for%20Federal%20Contractors%20090109%20FINALa(1).pdf)

In November 2009, President Obama signed the 2010 Homeland Security bill that included legislation to extend the E-Verify program for an additional three years. There were no proposals in the bill to make the E-Verify program mandatory for all non-federal employers in the U.S., but it is still mandatory for all federal contractors and certain subcontractors.

II. SOCIAL SECURITY NUMBER (SSN) MISMATCH LETTERS

Effective November 6, 2009, the U.S. Department of Homeland Security officially rescinded its Social Security “No-Match” rule. The “No-Match” rule set forth a specific protocol that employers should follow within 90 days of receiving a letter from the Social Security Administration (SSA) advising that the Social Security Number reported for a certain employee (or employees) did not match the name(s) found in the SSA’s database. Employers that failed to follow the protocol could have the receipt of the “No-Match” letter used as evidence against them in subsequent legal action that the employer had “constructive knowledge” that the employee(s) who was/were the subject of the letter was/were not authorized to work in the U.S. The No-Match protocol was

originally introduced in August 2007, but a lawsuit was filed shortly thereafter resulting in an injunction preventing the implementation of the proposed protocol.

Even though the proposed No-Match rule is no longer valid, employers should not ignore any No-Match letters that they receive from the SSA and they should take appropriate steps to ensure that their records are up-to-date and accurate, as the “no-match” letter can alert workers that they are not receiving proper credit for their earnings, which can affect their future retirement or disability benefits administered by SSA. However, the letters specifically state that employers should not “take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her Social Security number appears on the [no-match] list” and that, “[d]oing so could, in fact, violate State or Federal law and subject [an employer] to legal consequences.”

Given the relatively recent rescission of the “no-match” rule, it remains to be seen whether the SSA will issue no-match letters in 2010 or, if they do, what form they will take.

III. CONCLUSION

In short, enforcement activity against employers relating to the employment of foreign workers has increased on several fronts, as have the penalties against those employers who are found to have violated the law. Many employers have determined that an audit of their I-9 records is a good step to take to pro-actively address any potential paperwork problems before an employer is confronted with an audit. For those

employers who have or had H-1B workers, an audit of the labor condition application records and supporting documentation is also advisable.

elaws® - Employment Law Guide A Companion to the FirstStep Employment Law Advisor**Work Authorization for non-U.S. Citizens: Workers in Professional and Specialty Occupations (H-1B, H-1B1, and E-3 Visas)**

- [Who Is Covered](#)
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Related Information**Compliance Assistance By Law**

- [The Immigration and Nationality Act \(INA\)](#)

DOL Agency Assistance

- [Wage and Hour Division INA Page](#)
- [ETA H-1B Specialty \(Professional\) Workers Page](#)
- [ETA H-1B1 Specialty \(Professional\) Workers Page](#)

Other Government Assistance

- [U.S. Citizenship and Immigration Service \(USCIS\)](#)

Sections 101(a)(15)(H)(i)(b) and (b1); 212(n) and (t), and 214(g) of the Immigration and Nationality Act of 1952, (INA)

(<http://www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=act>)

as amended

(8 USC §1101(a)(15)(H)(i)(b) and (b1), 1182(n) and (t), 1184(g);

20 CFR Part 655 Subparts H and I(http://www.dol.gov/dol/alicfr/tide_20/Part_655/Subpart_H.htm))

Who is Covered

The Immigration and Nationality Act (INA) is administered by the Office of Foreign Labor Certification (OFLC) of the Employment and Training Administration (ETA). The INA applies to employers seeking to hire nonimmigrant aliens as workers in specialty occupations or as fashion models of distinguished merit and ability, using the H-1B nonimmigrant visa classification. The H-1B1 program is for hiring nonimmigrant aliens from Chile and Singapore as workers in specialty occupations and the E-3 is for hiring nonimmigrant aliens from Australia as workers in specialty occupations.

Basic Provisions/Requirements

The INA allows employment of alien workers in certain specialty occupations (generally those requiring a bachelor's degree or its equivalent). Foreign workers such as engineers, teachers, computer programmers, medical doctors, and physical therapists may be employed under the H-1B, H-1B1, and E-3 visa classification.

The INA sets forth certain prerequisites for employers wishing to employ H-1B, H-1B1, and E-3 nonimmigrant workers. To obtain H-1B or H-1B1 status approval, the employer must first file a Labor Condition Application (LCA), Form ETA 9035 or Form ETA 9035E, with the Department of Labor. The employer must state that it will:

- Pay the nonimmigrant workers at least the local prevailing wage or the employer's actual wage, whichever is higher; pay for non-productive time in certain circumstances; and offer benefits on the same basis as for U.S. workers;
- Provide working conditions for H-1B, H-1B1, or E-3 workers that will not adversely affect the working conditions of workers similarly employed;
- **Not** employ an H-1B, H-1B1, or E-3 worker at a location where a strike or lockout in the occupational classification is occurring, and notify ETA of any future strike or lockout; and
- On or within 30 days before the date the LCA is filed with ETA, provide notice of the employer's intent to hire H-1B, H-1B1, or E-3 workers. The employer must provide this notice to the bargaining representative of workers in the occupation in which the H-1B, H-1B1, or E-3 worker will be employed. If there is no bargaining representative, the employer must post such notices in conspicuous locations at the intended place(s) of employment, or provide them electronically.

The number of new visas that can be issued each year is subject to a cap. H-1B visas are capped at 65,000 during a fiscal year; an additional 20,000 are available to those individuals who received a master's degree or higher from a U.S. institution of higher education. H-1B1 visas are limited to 1,400 nationals of Chile and 5,400 nationals of Singapore; E-3 visas are limited to 10,500 nationals of Australia.

Additional rules apply to employers who are dependent upon H-1B workers or are willful violators of the H-1B rules. An H-1B dependent employer is, generally, one whose H-1B workers comprise 15 percent or more of the employer's total workforce. Different thresholds apply to smaller employers. H-1B dependent employers who wish to hire only H-1B workers who are paid at least \$60,000 per year or have a master's degree or higher in a specialty related to the employment, can be exempted from these additional rules.

H-1B dependent employers and willful violator employers must attest to the following three elements addressing non-displacement and recruitment of U.S. workers:

- The employer will not displace any similarly employed U.S. worker within 90 days before or after applying for H-1B status, or an extension of status for any H-1B worker;
- The employer will not place any H-1B worker employed pursuant to the LCA at the worksite of another employer **unless** the employer first makes a bona fide inquiry as to whether the other employer has displaced or intends to displace a similarly employed U.S. worker within 90 days before or after the placement of the H-1B worker; and
- The employer, before applying for H-1B status for any alien worker pursuant to an H-1B LCA, took good faith steps to recruit U.S. workers for the job for which the alien worker is sought, at wages at least equal to those offered to the H-1B worker. Also, the employer will offer the job to any U.S. worker who applies and is equally or better qualified than the H-1B worker. This attestation does not apply if the H-1B worker is a "priority worker" (see Section 203(b) (1) (A), (B), or (C) of the INA).

The American Recovery and Reinvestment Act of 2009 requires all recipients of federal funds under Chapter 13 of the Federal Reserve Act or the Troubled Asset Relief Program of the Emergency Economic Stabilization Act of 2008 who want to hire H-1B workers to make the attestations required of an H-1B dependent employer that are listed above.

The Department of Labor has also created a new portal for accessing its electronic version of the Form ETA-9035E. The ICert system allows employers to have accounts that will automatically populate many of the fields in the form and to track the applications.

After the Department of Labor certifies the LCA, the employer will apply to the U.S. Citizenship and Immigration Services (USCIS) for

approval to employ an alien worker under H-1B status so that alien workers may be hired. For H-1B1 and E-3 visas, after the Department of Labor certifies the LCA, the employer must follow the procedures of USCIS and the Department of State, which differ in some respects from procedures for H-1B visas.

The Department of Labor's Wage and Hour Division is responsible for enforcement of this program.

Employee Rights

H-1B, H-1B1, and E-3 workers are granted a number of rights. The employer must give the worker a copy of the LCA. The employer must pay the worker at least the same wage rate as paid to other employees with similar experience and qualifications or the local prevailing wage for the occupation in the area of employment, whichever is higher. The employer must pay for non-productive time caused by the employer or by the worker's lack of a license or permit. The employer must offer the worker fringe benefits on the same basis as its other employees. Also, the employer may not require the worker to pay a penalty for leaving employment prior to any agreed date. However, this restriction does not preclude the employer from seeking "liquidated damages" pursuant to relevant state law. Liquidated damages are generally estimates stated in a contract of the anticipated damages to the employer caused by the worker's breach of contract.

U.S. workers and job applicants may also have certain rights under the H-1B programs. U.S. workers employed by an H-1B dependent or willful violator employer may not be laid off within 90 days before or after the employer files a USCIS petition to employ an H-1B worker in an essentially equivalent job. In addition, an H-1B dependent employer or willful violator must offer the job to any U.S. worker who applies and is equally or better qualified for the job than the H-1B alien worker. The U.S. Department of Justice has the authority to investigate complaints of failure to hire qualified U.S. workers.

No employer of H-1B, H-1B1, or E-3 workers may intimidate, threaten, blacklist, discharge, or in any other manner discriminate against any employee, former employee, or job applicant for disclosing violations of H-1B, H-1B1, or E-3 provisions or for cooperating in an official investigation of the employer's compliance.

U.S. workers and H-1B/H-1B1/E-3 workers may also examine the public disclosure documents that the employer is required to maintain that provide information about the employer's compliance with the attestation elements.

Complaints about non-compliance with H-1B/H-1B1/E-3 labor standards may be filed with a local Wage and Hour Division office (<http://www.dol.gov/whd/america2.htm>).

Recordkeeping, Reporting, Notices and Posters

Notices and Posters

There is no poster requirement.

There is a notice requirement. The employer must inform U.S. workers of the intent to hire a foreign worker by providing notice of the filing of the LCA to the bargaining representative if there is one, or, if there is no bargaining representative, by posting notice of filing in two conspicuous locations at the employer's establishments, or by providing electronic notice (see below). The notice must be provided on or within the 30-day period before the date that the labor condition application is submitted to DOL. The notice must:

- Indicate that H-1B workers are sought
- Identify the number of H-1B employees the employer plans to hire
- State the occupational classification of the H-1B employees
- State the wages offered
- State the period of employment
- State the locations at which the H-1B employees will work
- State that the LCAs are available for public inspection at the employer's U.S. principal place of business or at the worksite

The notice must include the following statement: "Complaints alleging misrepresentation of material facts in the labor condition application and/or failure to comply with the terms of the labor condition application may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

If the employer is an H-1B-dependent employer or a willful violator, and the LCA is not being used only for H-1B exempt nonimmigrants, the notice must contain additional information and must also contain the following statement:

Complaints alleging failure to offer employment to an equally or better qualified U.S. applicant or an employer's misrepresentation regarding such offers of employment may be filed with the Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration-Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW, Washington, DC 20530, Telephone: 1-800-255-8155 (employees), 1-800-255-7688 (employers); Web address: <http://www.usdoj.gov/crt/oscp/>

As noted above, notification may occur in one of two methods: hard copy or electronic notice. The hard copy notice must be given to the bargaining representative for workers in the occupation or, if there is no bargaining representative, be posted for 10 consecutive days in at least two conspicuous locations at each place where any nonimmigrant will be employed. Notice can also be provided by whatever electronic means the employer normally communicates with its employees (e.g., e-mail, bulletin board, and home Web page).

A copy of the LCA must be provided to each H-1B nonimmigrant no later than the time the H-1B nonimmigrant reports to work at the place of employment.

Recordkeeping

Employers of any H-1B, H-1B1, and E-3 nonimmigrant workers are required to make a filed LCA and its supporting documentation available for public inspection at the employer's principal place of business or at the place of employment of the H-1B/H-1B1/E-3 nonimmigrant workers within one day after the date of submission of the LCA. This public inspection file must contain the following:

- A copy of the certified LCA including cover pages
- Documents providing the wage rate paid to the H-1B nonimmigrant worker
- Method used to establish the "actual wage," including any periodic increases which the system may provide
- Prevailing wage rate and a general description of the methodology of the source
- Documents showing satisfaction of the union/employee notification requirements
- Summary of benefits offered to U. S. workers and H-1B workers
- Where the employer utilizes the definition of "single employer" in the Internal Revenue Code (IRC), a list of any entities included as part of the single employer in making the determination as to its H-1B-dependency status

In the event of corporate change, the public inspection file must also contain:

- A sworn statement by a successor entity accepting all liabilities of predecessor entity

- Affected LCA number(s) and effective date(s)
- Description of successor entity's actual wage system
- Successor entity's employer identification number

Additional documentation is required for employers who are H-1B-dependent, willful violators, or TARP/Federal Reserve Chapter 13 recipients:

- List of "exempt" H-1B nonimmigrant workers
- Summary of recruitment methods, if the employer hired any "non-exempt" H-1B workers

In addition to the records listed above, every **H-1B dependent, willful violator employer, and TARP/Federal Reserve Chapter 13 recipient** must keep the required documentation concerning compliance with the non-displacement obligation.

Additionally H-1B, H-1B1, and E-3 employers must maintain complete **payroll records** and make such available to the Wage and Hour Division upon request. The records must include the following information:

- Name, address, and occupation, for all H-1B, H-1B1, and E-3 workers and any other worker employed by the employer in the same occupation at the place of employment
- Rate of pay, total wages paid each pay period, date of pay and pay period covered by the payment, and total additions to or deductions from pay each pay period for each H-1B, H-1B1, and E-3 worker and any other worker employed by the employer in the same occupation at the place of employment
- Hours worked each day and each week by the employee if the employee is paid on other than a salary basis (with respect to H-1B, H-1B1, and E-3 workers and any other worker employed by the employer in the same occupation at the place of employment)
- With respect to only H-1B, H-1B1, and E-3 workers, whether the worker is a part-time employee
- Documentation of the offer of benefits and eligibility for benefits provided as compensation for services

Payroll records for the nonimmigrant workers and other employees in the occupational classification must be maintained for a period of three years from the date of the creation of the records (or longer if an enforcement proceeding is in effect) and be kept at the employer's principal place of business in the U.S. or at the place of employment of workers in the H-1B program.

The other records listed above must be kept for one year beyond the end of the employment period specified on the LCA, and be available at the employer's principal place of business in the U.S. or at the place of employment.

Reporting

After the LCA is certified, if there is a strike or lockout of workers at the place of employment in the same occupational classification as the H-1B nonimmigrants, the employer must notify ETA within three days.

Penalties/Sanctions

When violations are found, the Administrator of the Wage and Hour Division may assess civil money penalties with maximums ranging from \$1,000 to \$35,000 per violation, depending on the type and severity of the violation. The Administrator may also impose other remedies, including payment of back wages.

Within 15 days of the date of the determination, any interested party may request a hearing on the Wage and Hour Administrator's determination before an Administrative Law Judge (ALJ). Within 30 days of the decision by an ALJ, an interested party may request a review of the ALJ's decision by the Department's Administrative Review Board.

Employers found to have committed certain violations may also be precluded from future access to the H-1B program as well as to other nonimmigrant and immigrant programs for a period of at least one year and as much as three years depending on the nature of the violation.

An H-1B employer will be considered in compliance notwithstanding a technical or procedural failure if such employer:

- Makes a good faith attempt to comply;
- Voluntarily corrects violations within 10 business days of being advised by an enforcement authority;
- Has not engaged in a pattern or practice of willful violations; and
- For prevailing wage violations, can establish that the wage was calculated consistent with recognized industry standards and practices.

Relation to State, Local, and Other Federal Laws

Various federal, state and local labor standards such as the Fair Labor Standards Act, will apply to foreign workers employed in the U.S.

Compliance Assistance Available

Information on filing and processing LCAs may be found on the Foreign Labor Certification (<http://www.foreignlaborcert.doleta.gov/>) page of the Employment and Training Administration's (ETA) Web site (<http://www.doleta.gov/>).

More detailed information may also be obtained by contacting the Office of Foreign Labor Certification (<http://www.foreignlaborcert.doleta.gov/>) or the Wage and Hour Division (<http://www.wagehour.dol.gov/>) (1-866-4USWAGE/1-866-487-9243). Information on how to submit a petition requesting an H-1B, H-1B1, or E-3 visa may be obtained from USCIS.

The Department of Labor provides employers, workers, and others with clear and easy-to-access information and assistance on how to comply with the Immigration and Nationality Act. Among the many resources available are:

- H-1B, H-1B1, and E-3 Specialty (Professional) Workers Web page (<http://www.foreignlaborcert.doleta.gov/h-1b.cfm>): Describes the qualifying criteria and the filing process as well as programs news and updates.
- Series of H-1B, H-1B1, and E-3 Fact Sheets (<http://www.dol.gov/whd/regs/compliance/FactSheet62/TopicalH1BIndex.htm>)

Additional compliance assistance including explanatory brochures, fact sheets, and regulatory and interpretive materials is available on the Compliance Assistance "By Law" (<http://www.dol.gov/compliance/laws/comp-laws.htm>) Web page.

DOL Contacts

Employment and Training Administration, Office of Foreign Labor Certification (<http://www.foreignlaborcert.doleta.gov/>)

E-mail: ETApagemaster@dol.gov

Tel: 1-877-US2JOBS (1-877-872-5627) or 1-202-693-3010; TTY: 1-877-889-5627

Wage and Hour Division (<http://www.dol.gov/whd/>)

Contact WHD (<http://www.dol.gov/whd/contactform.asp>)

Tel: 1-866-4USWAGE (1-866-487-9243); TTY: 1-877-889-5627

The Employment Law Guide is offered as a public resource. It does not create new legal obligations and it is not a substitute for the U.S. Code, Federal Register, and Code of Federal Regulations as the official sources of applicable law. Every effort has been made to ensure that the information provided is complete and accurate as of the time of publication, and this will continue. Later versions of this Guide will be offered at www.dol.gov/compliance or by calling our Toll-Free Help Line at 1-866-4-USA-DOL (1-866-487-2365).

Table of Contents

Form I-9, Employment Eligibility Verification

Instructions

Read all instructions carefully before completing this form.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the United States) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination. For more information, call the Office of Special Counsel for Immigration Related Unfair Employment Practices at 1-800-255-8155.

What Is the Purpose of This Form?

The purpose of this form is to document that each new employee (both citizen and noncitizen) hired after November 6, 1986, is authorized to work in the United States.

When Should Form I-9 Be Used?

All employees (citizens and noncitizens) hired after November 6, 1986, and working in the United States must complete Form I-9.

Filling Out Form I-9

Section 1, Employee

This part of the form must be completed no later than the time of hire, which is the actual beginning of employment. Providing the Social Security Number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

Noncitizen nationals of the United States are persons born in American Samoa, certain former citizens of the former Trust Territory of the Pacific Islands, and certain children of noncitizen nationals born abroad.

Employers should note the work authorization expiration date (if any) shown in **Section 1**. For employees who indicate an employment authorization expiration date in **Section 1**, employers are required to reverify employment authorization for employment on or before the date shown. Note that some employees may leave the expiration date blank if they are aliens whose work authorization does not expire (e.g., asylees, refugees, certain citizens of the Federated States of Micronesia or the Republic of the Marshall Islands). For such employees, reverification does not apply unless they choose to present

in **Section 2** evidence of employment authorization that contains an expiration date (e.g., Employment Authorization Document (Form I-766)).

Preparer/Translator Certification

The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his or her own. However, the employee must still sign **Section 1** personally.

Section 2, Employer

For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors. Employers must complete **Section 2** by examining evidence of identity and employment authorization within three business days of the date employment begins. However, if an employer hires an individual for less than three business days, **Section 2** must be completed at the time employment begins. Employers cannot specify which document(s) listed on the last page of Form I-9 employees present to establish identity and employment authorization. Employees may present any List A document **OR** a combination of a List B and a List C document.

If an employee is unable to present a required document (or documents), the employee must present an acceptable receipt in lieu of a document listed on the last page of this form. Receipts showing that a person has applied for an initial grant of employment authorization, or for renewal of employment authorization, are not acceptable. Employees must present receipts within three business days of the date employment begins and must present valid replacement documents within 90 days or other specified time.

Employers must record in Section 2:

1. Document title;
2. Issuing authority;
3. Document number;
4. Expiration date, if any; and
5. The date employment begins.

Employers must sign and date the certification in **Section 2**. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. If photocopies are made, they must be made for all new hires. Photocopies may only be used for the verification process and must be retained with Form I-9. **Employers are still responsible for completing and retaining Form I-9.**

For more detailed information, you may refer to the *USCIS Handbook for Employers (Form M-274)*. You may obtain the handbook using the contact information found under the header "USCIS Forms and Information."

Section 3, Updating and Reverification

Employers must complete **Section 3** when updating and/or reverifying Form I-9. Employers must reverify employment authorization of their employees on or before the work authorization expiration date recorded in **Section 1** (if any). Employers **CANNOT** specify which document(s) they will accept from an employee.

- A. If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B. If an employee is rehired within three years of the date this form was originally completed and the employee is still authorized to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C. If an employee is rehired within three years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B; and:
 - 1. Examine any document that reflects the employee is authorized to work in the United States (see List A or C);
 - 2. Record the document title, document number, and expiration date (if any) in Block C; and
 - 3. Complete the signature block.

Note that for reverification purposes, employers have the option of completing a new Form I-9 instead of completing **Section 3**.

What Is the Filing Fee?

There is no associated filing fee for completing Form I-9. This form is not filed with USCIS or any government agency. Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

USCIS Forms and Information

To order USCIS forms, you can download them from our website at www.uscis.gov/forms or call our toll-free number at 1-800-870-3676. You can obtain information about Form I-9 from our website at www.uscis.gov or by calling 1-888-464-4218.

Information about E-Verify, a free and voluntary program that allows participating employers to electronically verify the employment eligibility of their newly hired employees, can be obtained from our website at www.uscis.gov/e-verify or by calling 1-888-464-4218.

General information on immigration laws, regulations, and procedures can be obtained by telephoning our National Customer Service Center at 1-800-375-5283 or visiting our Internet website at www.uscis.gov.

Photocopying and Retaining Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Form I-9s for three years after the date of hire or one year after the date employment ends, whichever is later.

Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR 274a.2.

Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by authorized officials of the Department of Homeland Security, Department of Labor, and Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Paperwork Reduction Act

An agency may not conduct or sponsor an information collection and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The public reporting burden for this collection of information is estimated at 12 minutes per response, including the time for reviewing instructions and completing and submitting the form. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529-2210. OMB No. 1615-0047. **Do not mail your completed Form I-9 to this address.**

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-9, Employment Eligibility Verification

Read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification (To be completed and signed by employee at the time employment begins.)

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

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 #) _____
☐ An alien authorized to work (Alien # or Admission #) _____
 until (expiration date, if applicable - month/day/year)

Employee's Signature

Date (month/day/year)

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.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

Section 2. Employer Review and Verification (To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number, and expiration date, if any, of the document(s).)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____				

CERTIFICATION: I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is authorized to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification (To be completed and signed by employer.)

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment authorization.	
Document Title: _____	Document #: _____
Expiration Date (if any): _____	
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 (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS

All documents must be unexpired

LIST A

**Documents that Establish Both
Identity and Employment
Authorization**

LIST B

**Documents that Establish
Identity**

LIST C

**Documents that Establish
Employment Authorization**

OR

AND

1. U.S. Passport or U.S. Passport Card	1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	1. Social Security Account Number card other than one that specifies on the face that the issuance of the card does not authorize employment in the United States
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address	2. Certification of Birth Abroad issued by the Department of State (Form FS-545)
4. Employment Authorization Document that contains a photograph (Form I-766)	3. School ID card with a photograph	3. Certification of Report of Birth issued by the Department of State (Form DS-1350)
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or Form I-94A bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form	4. Voter's registration card	4. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
	5. U.S. Military card or draft record	
	6. Military dependent's ID card	
	7. U.S. Coast Guard Merchant Mariner Card	5. Native American tribal document
	8. Native American tribal document	
	9. Driver's license issued by a Canadian government authority	6. U.S. Citizen ID Card (Form I-197)
	For persons under age 18 who are unable to present a document listed above:	7. Identification Card for Use of Resident Citizen in the United States (Form I-179)
6. Passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I-94 or Form I-94A indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI	10. School record or report card	8. Employment authorization document issued by the Department of Homeland Security
	11. Clinic, doctor, or hospital record	
	12. Day-care or nursery school record	

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

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U.S. Immigration
and Customs
Enforcement

U.S. Immigration and Customs Enforcement

News

December 1, 2009

Form I-9 Inspection Overview

On November 6, 1986, the enactment of the Immigration Reform and Control Act required employers to verify the identity and employment eligibility of their employees and created 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 I-9 (Form I-9) as the means of documenting this verification. Employers are required by law to maintain for inspection original Forms I-9 for all current employees. In the case of former employees, retention of Forms I-9 are required for a period of at least three years from the date of hire or for one year after the employee is no longer employer, whichever is longer.

The administrative inspection process is initiated by the service of a Notice of Inspection (NOI) upon an employer compelling the production of Forms I-9. U.S. Immigration and Customs Enforcement (ICE) typically will allow 3 business days to present the Forms I-9. Often, ICE will request the employer provide supporting documentation, which may include a copy of the payroll, list of current employees, Articles of Incorporation, and business licenses.

ICE agents or auditors then conduct an inspection of the Forms I-9 for compliance. When technical or procedural violations are found, pursuant to INA §274A(b)(6)(B) (8 U.S.C. § 1324a (b)(6)(B)), an employer is given ten business days to make corrections. An employer may receive a monetary fine for all substantive and uncorrected technical violations. Employers determined to have knowingly hired or continued to employ unauthorized workers under INA § 274A(a)(1)(a) or (a)(2) (8 U.S.C. § 1324a(a)(1)(a) or (a)(2)) will be required to cease the unlawful activity, may be fined, and in certain situations may be prosecuted criminally. Additionally, an employer found to have knowingly hired or continued to employ unauthorized workers may be subject to debarment by ICE, meaning that the employer will be prevented from participating in future federal contracts and from receiving other government benefits.

Monetary penalties for knowingly hire and continuing to employ violations range from \$375 to \$16,000 per violation, with repeat offenders receiving penalties at the higher end.

Penalties for substantive violations, which includes failing to produce a Form I-9, range from \$110 to \$1,100 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations. (See INA §274A(e)(5) (8 U.S.C. 1324a (e)(5)))

ICE will notify the audited party, in writing, of the results of the inspection once completed. The following are the most common notices:

- **Notice of Inspection Results** – also known as a “compliance letter,” used to notify a business that they were found to be in compliance.
- **Notice of Suspect Documents** – advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has determined that the employee is unauthorized to work and advises the employer of the possible criminal and civil penalties for continuing to employ this individual. ICE provides the employer and employee an opportunity to present additional documentation to demonstrate work authorization if they believe the finding is in error.
- **Notice of Discrepancies** – advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has been unable to determine their work eligibility. The employer should provide the employee with a copy of the notice, and give the employee an opportunity to present ICE with additional documentation to establish their employment eligibility.
- **Notice of Technical or Procedural Failures** – identifies technical violations identified during the audit and gives the employer 10 business days to correct the forms. After 10 business days, uncorrected technical and procedural failures will become substantive violations.
- **Warning Notice** – issued in circumstances where substantive verification violations were identified but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer.
- **Notice of Intent to Fine (NIF)** – may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations.

In instances where a NIF is served, charging documents will be provided specifying the violations committed by the employer. The employer has the opportunity to either negotiate a settlement with ICE or request a hearing before the Office of the Chief Administrative Hearing Officer (OCAHO) within 30 days of receipt of the NIF. If the employer takes no action after receiving a NIF, ICE will issue a Final Order. If a hearing is requested, OCAHO assigns the case to an Administrative Law Judge (ALJ), and sends all parties a copy of a Notice of Hearing and government’s complaint, thus setting the adjudicative process in motion.

The Notice of Hearing spells out the procedural requirements for answering the complaint and the potential consequences of failure to file a timely response. Many OCAHO cases never reach the evidentiary hearing stage because the parties either reach a settlement, subject to the approval of the ALJ, or the ALJ reaches a decision on the merits through dispositive prehearing rulings.

Determination of Recommended Fine

The cumulative recommended fine set forth in the Notice of Intent to Fine is determined by adding the amount derived from the **Knowing Hire / Continuing to Employ Fine Schedule** (plus

enhancement or mitigation) with the amount derived from the **Substantive / Uncorrected Technical Violations Fine Schedule** (plus enhancement or mitigation). Typically, the date of the violation shall be the date ICE conducted the Form I-9 inspection and not the date the Form I-9 was completed by the employer.

Penalties for Knowing Hire / Continuing to Employ Violations

Employers determined to have knowingly hire or continuing to employ violations shall be required to cease the unlawful activity and may be fined. The agent or auditor will divide the number of knowing hire and continuing to employ violations by the number of employees for whom a Form I-9 should have been prepared to obtain a violation percentage. This percentage provides a base fine amount depending on whether this is a First Tier (1st time violator), Second Tier (2nd time violator), or Third Tier (3rd or subsequent time violator) case. The standard fine amount listed in the table relates to each knowing hire and continuing to employ violation. The range of the three tiers of penalty amounts (Since the passage of IRCA in 1986, federal civil monetary penalties have been increased on two occasions in 1999 and 2008 pursuant to the Federal Civil Penalties Inflation Act of 1990, as amended by the Debt Collection Improvement Act of 1996. These adjustments are designed to account for inflation in the calculation of civil monetary penalties and are determined by a non-discretionary, statutory formula. (See 73 FR 10130 (February 26, 2008)) are as follows:

Knowing Hire / Continuing to Employ Fine Schedule
(for violations occurring on or after 3/27/08)

Knowing Hire and Continuing to Employ Violations	First Tier \$375 - \$3,200	Second \$3,200 - \$6,500	Third Tier \$4,300 - \$16,000
	Standard Fine Amount		
0% - 9%	\$375	\$3,200	\$4,300
10% - 19%	\$845	\$3,750	\$6,250
20% - 29%	\$1315	\$4,300	\$8,200
30% - 39%	\$1785	\$4,850	\$10,150
40% - 49%	\$2255	\$5,400	\$12,100
50% or more	\$2,725	\$5,950	\$14,050

Knowing Hire / Continuing to Employ Fine Schedule
(for violations occurring between 9/29/99 and 3/27/08)

Knowing Hire and Continuing to Employ Violations	First Tier \$275 - \$2,200	Second \$2,200 - \$5,500	Third Tier \$3,300 - \$11,000
	Standard Fine Amount		
0% - 9%	\$275	\$2,200	\$3,300
10% - 19%	\$600	\$2,750	\$4,600
20% - 29%	\$925	\$3,300	\$5,900
30% - 39%	\$1250	\$3,850	\$7,200
40% - 49%	\$1575	\$4,400	\$8,500

50% or more	\$1,900	\$4,950	\$9,800
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Penalties for Substantive and Uncorrected Technical Violations

The agent or auditor will divide the number of violations by the number of employees for whom a Form I-9 should have been prepared to obtain a violation percentage. This percentage provides a base fine amount depending on whether this is a first offense, second offense, or a third or more offense. The standard fine amount listed in the table relates to **each** Form I-9 with violations. The range of penalty amounts are as follows:

Substantive / Uncorrected Technical Violation Fine Schedule

Substantive Verification Violations	1st Offense \$110 - \$1100	2nd Offense \$110 - \$1100	3rd Offense + \$110 - \$1100
Standard Fine Amount			
0% - 9%	\$110	\$550	\$1,100
10% - 19%	\$275	\$650	\$1,100
20% - 29%	\$440	\$750	\$1,100
30% - 39%	\$605	\$850	\$1,100
40% - 49%	\$770	\$950	\$1,100
50% or more	\$935	\$1,100	\$1,100

Enhancement Matrix

The following matrix will be used to enhance or mitigate the recommended fine contained on the Notice of Intent to Fine. (*Id.*)

Enhancement Matrix

Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Aliens	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%

View the Form I-9 Process Flow Chart (PDF (<http://www.ice.gov/doclib/pi/news/factsheets/i9-inspection.pdf>) | 390 KB)

U.S. Immigration and Customs Enforcement (ICE) is the largest investigative arm of the Department of Homeland Security.

ICE comprises four integrated divisions that form a 21st century law enforcement agency with broad responsibilities for a number of key homeland security priorities. For more information, visit www.ICE.gov. To report suspicious activity, call 1-866-347-2423.

Last Modified: Tuesday, December 1, 2009