

Publications

ICE Revises Form I-9 Guidance and Expands Potential Violations

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U.S. Immigration and Customs Enforcement (ICE) recently revised its Form I-9 inspection guidance, increasing employers' potential exposure in audits and inspections. ICE reclassified many common Form I-9 errors historically treated as technical violations to substantive violations, making those errors now subject to immediate monetary penalties. The revised guidance also classifies certain errors previously not defined by ICE as technical violations.

Expanded Substantive Violations

Prior to this new guidance, employers generally could correct certain technical Form I-9 errors within 10 business days after receiving notice from ICE. Now, many of those same errors will be considered substantive violations that can subject an employer to fines without an opportunity to cure.

The revised guidance broadens the range of substantive violations across multiple areas of Form I-9 compliance, including Section 1 employee information, Section 2 employer verification, Supplements A and B, and process requirements related to remote verification and electronic Form I-9 systems.

Section 1 Omissions Reclassified as Substantive Violations:

- Missing employee date of birth;
- Missing A number for employees attesting to lawful permanent residence status;
- Missing A number, I-94 number, or foreign passport information, where required;
- Missing employment authorization expiration date, where required; and
- Missing employee signature date.

Section 2 Errors Reclassified as Substantive Violations:

- Missing document title, issuing authority, document number, or expiration date for List A, B, or C documents;
- Failure to timely verify replacement documents following a document receipt;
- Missing employer or authorized representative title;
- Missing employee date of hire; and
- Missing employer or authorized representative signature date.

Supplement A and B Errors Reclassified as Substantive Violations:

- Incomplete preparer or translator information in Supplement A;
- Missing rehire date in Supplement B, where applicable;
- Missing document title, document number, or expiration date in Supplement B; and
- Failure to timely verify replacement documents in Supplement B.

Process-Based Violations Reclassified as Substantive Violations:

- Use of the Spanish-language Form I-9 outside of Puerto Rico;
- Failure to check the alternative procedure box when using an alternative authorized procedure by DHS for document examination;
- Use of remote verification procedures without proper E-Verify enrollment or participation in another authorized DHS program; and
- Failure to comply with electronic Form I-9 system requirements related to electronic signatures, retention, documentation, security, and reproduction.

Expanded Technical Violations

In addition to expanding the scope of substantive violations, the revised guidance also classifies errors not previously defined by ICE as technical errors, which include:

- Failure to use the current Form I-9 version at the time of completion;
- Failure to include other last names used, if any;
- Failure to ensure the employee's Social Security Number is correct when enrolled in and utilizing E-Verify;
- Failure to record the employee's complete name at the top of page 2, Supplement A, or Supplement B; and
- Failure to record the employee's new name in Supplement B, where applicable.

Impact on Employers

In response to the revised guidance, employers should promptly review existing I-9 policies and procedures and ensure those responsible for completion of I-9s are fully trained. Further, employers should confirm electronic I-9 systems are compliant. Finally, employers should conduct internal audits focused on

correcting errors that are now being classified as substantive violations.

