The I-9 Audit Readiness Guide

What Employers Need to Know Before ICE Calls

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FRAGOMEN WORKRIGHT™

I-9 and employment verification compliance is more critical than ever for any organization.

Compliance risks have markedly increased as the Department of Homeland Security (DHS) dramatically increases its I-9 and worksite enforcement efforts. The government is conducting more audits and investigations, and the potential risks and penalties for employers have increased as well.

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About the author

Daniel Brown, CEO, Fragomen WorkRight US

Daniel is also a partner in Fragomen's Washington, D.C. office and a senior member of its Government Strategies and Compliance Group, and has advised and defended some of the world's largest organizations on government audits and investigations.

Before entering private practice, he held senior roles inside the Department of Homeland Security, including Counselor to the Assistant Secretary and Director of the Office of Policy and Planning at ICE, and Deputy Associate General Counsel for Immigration at DHS. He began his career as a trial attorney with the former INS in New York City and later served in the INS General Counsel's Office.

I-9 vs. E-Verify: what's the difference?

Form I-9

Federal law requires U.S. employers to verify the identity and employment authorization of everyone hired for employment in the United States by completing and retaining an I-9 form for each employee.

It applies to U.S. citizens and noncitizens alike.

E-Verify

A separate electronic program, managed by DHS, that compares information from a completed Form I-9 with records available to DHS and the Social Security Administration (SSA).

E-Verify is voluntary for most employers under federal law, but it may be required for many federal contractors, and several state and local laws now require some or all employers to use it.

Although the two processes are related, participation in E-Verify does not replace the obligation to complete, retain, and, when required, update the I-9 form.

> **“Participation in E-Verify does not replace the obligation to complete, retain, and, when required, update the I-9 form.”**

Compliance means more than a correct form

Effective compliance requires much more than just accurate completion of the I-9 form. Employers must complete each step within prescribed timeframes, accept legally sufficient documentation without requiring an employee to present any specific document, safeguard sensitive personal information, retain records for the required period, timely reverify an employee's temporary work authorization, and respond properly when an E-Verify case does not immediately confirm work eligibility.

Increasingly, employers are also confronted with risks and questions about identity and document validity during the employment verification process.

Even the system you use can matter. During an I-9 Inspection ICE can review the underlying compliance of the I-9 system an employer is using. In several cases, ICE has imposed or is seeking to impose substantial penalties on employers because of alleged system flaws of commercial I-9 solutions, even where the actual I-9 forms did not contain any errors. See "Your I-9 software can be included in the audit" (page 13).

What's at stake

Failures can expose an employer to:

- Civil penalties
- Discrimination claims
- Operational disruption
- Reputational harm
- Debarment from federal contracting
- In more serious cases, criminal liability

The bigger risk can be your workforce

Employers in industries with large hourly workforces, such as construction, agriculture, retail, restaurants, food services or processing, and temporary staffing, face additional significant risks in an ICE audit or investigation, well beyond penalties for I-9 paperwork violations.

This could include employee turnover or the loss of important personnel if the government determines those workers are not authorized to work in the United States or the documents they presented are invalid.

Employers may also face questions or investigations about whether the company knew that some or all of these workers were unauthorized.

> **“Employee turnover could potentially have a much more severe impact on an employer's business or operations than any fines for I-9 errors.”**

The risk doesn't stop at your own payroll:

Staffing vendors

Businesses relying on temporary workers provided by third parties need to make sure those vendors or contractors also have strong compliance procedures, because ICE audits or investigations of those companies could also disrupt your operations.

Federal contractors

ICE can be expected to aggressively pursue debarment of any federal contractor found to have knowingly employed unauthorized workers.

The law behind the I-9: what is IRCA?

> The Immigration Reform and Control Act of 1986 (IRCA) prohibits employers from knowingly hiring or continuing to employ any worker who is unauthorized to work in the U.S.

The law requires employers to verify the identity and employment authorization of each person hired after November 6, 1986, retain evidence of completing that verification (Form I-9), and turn it over to the government in the event of an I-9 inspection. The requirement applies to U.S. citizens as well as noncitizens and generally covers individuals performing work or providing services in the United States for wages or other remuneration. It generally does not cover true independent contractors, volunteers who receive no remuneration, or certain casual domestic workers.

The other half of the law: you can't over-verify

IRCA also prohibits employers from discriminating based on immigration or citizenship status or national origin in hiring, firing, recruitment, or during the I-9 verification process. It also prohibits unfair documentary practices, commonly called document abuse. That happens when an employer asks for more or different documents, or rejects valid documents an employee presents during the I-9 process.

In practice

Every new hire goes through the same process. An employer can't ask for extra documents, or look harder at someone's papers, because of someone's immigration or citizenship status, an accent, a name, or where the person appears to be from.

Who does what: the agencies behind I-9 enforcement

USCIS — **U.S. Citizenship and Immigration Services (USCIS)** publishes the I-9 form, the M-274 Handbook for Employers and related guidance, and administers the E-Verify program.

ICE — **U.S. Immigration and Customs Enforcement (ICE)** enforces the I-9 requirements and conducts Form I-9 inspections and criminal worksite investigations.

IER — **The Department of Justice's Immigrant and Employee Rights Section (IER)**, part of the Civil Rights Division, enforces the INA's anti-discrimination provisions.

How the I-9 works, step by step

What are Section 1, Section 2 and Supplement B?

Section 1 (the employee)

The employee completes and signs it no later than the first day of employment, but not before a job offer has been made and accepted.

Section 2 (the employer)

The employer or its authorized representative completes it within three business days after the employee's first day of work for pay. The employer examines the original documents and decides whether they reasonably appear genuine and relate to the person presenting them.

Supplement B (formerly Section 3)

Used for reverification and qualifying rehires. Reverification generally applies when an employee's temporary employment authorization expires. It generally does not apply to U.S. citizens, noncitizen nationals or lawful permanent residents. Employers should track expiration dates carefully while also monitoring automatic extensions and status-specific guidance.

Which documents count?

The employee chooses which acceptable documents to present from the lists included with the form: one document from List A (which establishes both identity and employment eligibility), or one document from List B (identity) plus one from List C (work authorization).

List A		List B		List C
Identity and employment eligibility	or	Identity	+	Work authorization

Three things employers should never do

- Demand a particular document
- Request extra documentation
- Reject a document just because it has a future expiration date

Can someone else complete Section 2? Yes, but you are responsible for any errors

An employer may designate an authorized representative to complete Section 2 or Supplement B on its behalf. The representative doesn't need a particular title or license, but the employer remains responsible for any errors.

An employer can also have the employee choose the person who completes Section 2 or Supplement B on the employer's behalf.

Hiring remotely? What is the alternative procedure?

Historically, whoever completed Section 2 had to physically review the employee's documents with the employee present.

Since August 1, 2023, employers enrolled in and using E-Verify can use what is called the alternative procedure for anyone hired on or after that date. It gives employers a way to complete Section 2 for remote hires without an in-person review:

1. The employee sends copies of their documents.
2. The employee presents the original documents to the Section 2 completer over a live video call.
3. The employer keeps copies of the front and back of the documents with the I-9 and checks the box in Section 2 showing the alternative procedure was used.

E-Verify: how it works and the rules that trip employers up

E-Verify compares information entered on the employee's Form I-9 with available DHS and SSA records and confirms to the employer whether the new hire is authorized to work.

Enrollment requires signing a memorandum of understanding (MOU) that sets program rules, permitted uses, notice obligations, training requirements and restrictions.

The timing rule

The employer must first complete Form I-9 and then create the E-Verify case no later than three business days after the employee begins work for pay. Information must be entered exactly as recorded on Form I-9.

What E-Verify can't be used for

- Prescreening applicants
- Selectively verifying some workers
- Reverifying expiring work authorization (that's done on the I-9, in Supplement B)
- Running cases for employees outside the employer's authorized scope

What is a Tentative Nonconfirmation (TNC)?

In most cases, the system returns an Employment Authorized result promptly. Where it cannot immediately confirm someone's work authorization, it issues a Tentative Nonconfirmation (TNC). The employer must then:

- Notify the employee privately
- Allow the employee to decide whether to contest the TNC
- Follow the system's referral instructions and deadlines

> ⚠ **While a TNC is pending**
> The employer may not terminate, suspend, delay training, reduce pay, or take any other adverse action against the employee because the TNC was received.

Federal vs. state E-Verify rules

States

Several states have enacted E-Verify requirements for some or all employers in the state, and several of those states have active audit and enforcement programs.

Federal contractors

Federal contractors subject to the E-Verify Federal Acquisition Regulation (FAR) clause may have broader verification obligations, including existing employees assigned to covered contracts.

Why a correct I-9 isn't enough: identity and document fraud

Identity and document fraud are distinct risks that can undermine employment verification even when an employer follows the ordinary Form I-9 process. They show up in three ways:

AI-generated documents

Advances in generative artificial intelligence have made it easier to create counterfeit identity and work-authorization documents designed to survive a visual review.

Real identity, fake document

Genuine personal information obtained from a real individual can be paired with a forged or altered document, making inconsistencies harder to detect.

Valid-looking but revoked

A document may appear facially valid and unexpired even though the government has since revoked or invalidated the underlying employment authorization.

The three questions every employer should keep separate

1

Identity

Is the person presenting the documents actually the person whose information appears on them?

2

Document

Is the document genuine, unaltered and currently valid?

3

Form I-9

Did the employer complete the form accurately, on time and in line with the rules?

A satisfactory answer to one question does not necessarily resolve the others. A properly completed Form I-9 does not establish that an identity was not stolen, and a document that appears genuine does not establish that the authorization on it remains valid.

> A properly completed Form I-9 does not establish that an identity was not stolen.

Where the employer's duty stops

These distinctions matter because an employer's legal obligations are constrained by IRCA's conflicting requirements. The employer must determine whether the documents presented reasonably appear genuine and relate to the employee, without demanding particular documents or applying heightened scrutiny based on citizenship, immigration status, national origin or other protected characteristics.

Employers should avoid turning fraud awareness into generalized suspicion or ad hoc investigations.

Visual inspection alone may not reveal sophisticated fraud or a later government action affecting work authorization. E-Verify or government notifications may identify an issue after a document was accepted, including an Employment Authorization Document that still shows a future expiration date but has been revoked or invalidated by DHS.

What should you do if something doesn't look right?

When credible information raises a specific concern, employers should:

- Follow established procedures
- Consult current government guidance
- Document their response
- Give the employee a fair opportunity to resolve the issue or present acceptable documentation when required

Employers aren't expected to become document experts or identity investigators.

The goal is a consistent, nondiscriminatory process that keeps identity, document validity and Form I-9 compliance separate, and responds appropriately when reliable information calls any one of them into question.

When ICE calls: audits, investigations and penalties

ICE enforces the I-9 requirements. It conducts civil I-9 audits, or inspections, to test an employer's compliance, and criminal investigations where there is reason to believe an employer or individuals at an employer are knowingly employing unauthorized workers.

It starts with a Notice of Inspection

A Form I-9 inspection generally begins when Homeland Security Investigations serves a Notice of Inspection (NOI). The NOI usually requests the I-9 forms for all active employees and any employees terminated in the past 12 months, for the entire business or a specific location.

Along with the I-9 forms, ICE will request:

- Copies of employee documents
- Payroll records and employee rosters
- Business licenses and corporate records
- Related documentation

Because the response window is short, the employer should immediately contact counsel and begin gathering the records for production.

What ICE looks for

ICE reviews the I-9 records to determine:

- Whether there is an I-9 for every employee
- Whether the I-9s were completed on time
- Whether the forms contain any errors or omissions
- Whether the documents presented by employees are valid

Substantive vs. technical errors

Substantive errors

ICE can impose a fine immediately.

Technical or procedural errors

Less serious violations. ICE cannot impose fines until the employer has been provided notice of the error and at least ten business days to correct it.

Uncorrected technical failures can then lead to penalties.

3

business days

By statute, ICE can demand (without the need for a warrant or subpoena) that employers produce I-9 records within three business days.

What is a Notice of Suspect Documents?

During the audit, ICE also reviews the employee document information recorded on or attached to each I-9 to test whether the documents are valid. ICE will issue a Notice of Suspect Documents for any employee whose documents cannot be verified.

The employer must then terminate any employee on that list who cannot provide alternative acceptable documents.

The discrimination side of an audit

IER separately investigates complaints involving citizenship-status or national-origin discrimination, unfair documentary practices and retaliation.

A process meant to strengthen I-9 compliance can create additional risk if it appears to target or treat employees differently based on their real or apparent immigration or citizenship status, or national origin.

What it can cost

Paperwork fines

$288 to $2,861

per form that has at least one substantive error.

Knowing-hire fines

$716 to $5,724

per unauthorized worker for a first offense.

A separate set of civil fines if ICE finds that an employer knowingly hired or continued to employ an unauthorized worker.

Criminal penalties

For any employer found to have engaged in a pattern or practice of knowingly hiring or employing unauthorized workers.

Debarment

ICE can seek debarment from federal contracting for any employer found to have knowingly employed unauthorized workers.

> “Even for employers with no concerns regarding employment of unauthorized workers, those fines can quickly add up if the employer's I-9 records are not in good condition.”

Your I-9 software can be included in the audit

Technology can dramatically improve an employer's overall compliance with I-9 and E-Verify requirements. But the ICE regulations that allow electronic completion of I-9 forms include specific legal requirements those systems must meet, and in I-9 audits ICE is increasingly focused on the compliance of the electronic I-9 systems employers use.

> **“ The ICE regulations authorize the government to invalidate I-9 forms created on I-9 systems that do not meet the regulatory standards. ”**

Even with error-free forms

In several cases, ICE has imposed or is seeking to impose substantial penalties on employers because of alleged system flaws of commercial I-9 solutions, even where the actual I-9 forms did not contain any errors.

ICE review of an I-9 system frequently looks at the electronic signature process and whether the system's audit trail sufficiently captures the actions taken to complete or amend each I-9 record. If ICE determines that a system fails to meet the regulatory requirements, it could potentially deem every I-9 completed on that system invalid.

It is critically important that employers adopting or switching electronic I-9 systems assess them against these requirements. Employers should work with outside counsel to assess the compliance of their current I-9 system. Employers who have switched systems in recent years should also work with outside counsel to make sure records from the previous system were retained and transferred in a compliant manner.

Before the Notice of Inspection arrives

As worksite enforcement intensifies, employers should assess their Form I-9 programs before receiving a government notice. Consistent procedures, trained personnel, reliable records and timely remediation can reduce risk and help organizations respond confidently to an audit or investigation.

Employers should work with outside counsel to audit their I-9 forms regularly and fix any errors they find. The scorecard on the next page is a quick way to see where your program stands today.

How audit-ready is your I-9 program?

A 15-question scorecard

Answer Yes, No or Not sure. Mark N/A only where there's an N/A box and the question doesn't describe you. Not sure counts as No: if ICE sends a Notice of Inspection, you have three business days to produce your records.

		Yes	No	Not sure	N/A
Records and internal audits					
1	We audit our I-9s regularly with outside counsel and fix the errors we find.	☐	☐	☐	
2	We've reviewed I-9s from the COVID-19 remote-work period for recordkeeping gaps.	☐	☐	☐	
3	If a Notice of Inspection arrived today, we could produce an I-9 for every employee, plus supporting records, within three business days, and we know to call counsel right away.	☐	☐	☐	
Completing I-9s and E-Verify					
4	We have procedures that make sure I-9s and E-Verify cases are completed on time and accurately.	☐	☐	☐	
5	We track work authorization expiration dates and reverify on time, including automatic extensions.	☐	☐	☐	
6	If we use remote completion (the alternative procedure), our I-9s are completed in a compliant way, and we have a backup plan if that option changes or ends.	☐	☐	☐	☐
7	If we use E-Verify, all cases are closed, all nonconfirmation results are resolved, and contact information for our administrators and hiring sites is up to date.	☐	☐	☐	☐
Policies and training					
8	I-9 and employment verification are part of our corporate compliance policies, and we have a way to report and resolve concerns internally, including concerns about employee documents or unauthorized employment.	☐	☐	☐	
9	Everyone who completes I-9s or E-Verify cases is trained on the rules, including the prohibitions against immigration-related discrimination.	☐	☐	☐	
Your I-9 system					
10	We've worked with outside counsel to assess our electronic I-9 system against ICE's regulatory requirements, including electronic signatures and audit trails.	☐	☐	☐	☐
11	If we've switched I-9 systems in recent years, we've worked with outside counsel to confirm the old records were retained and transferred in a compliant manner.	☐	☐	☐	☐
Your exposure					
12	If we have a large hourly workforce, we've talked with outside counsel about additional reviews, including for identity and document fraud.	☐	☐	☐	☐
13	If we rely on staffing vendors, we've confirmed they have strong I-9 compliance procedures.	☐	☐	☐	☐
14	If we're a federal contractor, we have strong I-9 compliance procedures in place.	☐	☐	☐	☐
State and local rules					
15	We know whether any state we hire in requires E-Verify or requires us to notify employees during a federal enforcement action, and those rules are part of our program.	☐	☐	☐	

Your result

Count your No and Not sure answers. N/A doesn't count.

0	1 to 3	4 or more
Solid basics	**A few gaps to close**	**Time for an outside look**
You answered Yes to every question that applies to you. That's a good sign the basics are in place. Keep auditing your I-9s regularly with outside counsel, since a checklist can't check the forms themselves.	A gap in your process can show up on every form it touches. Start with your No and Not sure answers. The Audit Readiness Calculator estimates your potential exposure, so you know what's at stake.	You have gaps in the areas an audit looks at first. If a Notice of Inspection came today, you'd have three business days to produce your records. An Audit Readiness Assessment gives you a high-level review of the items most likely to be examined, shows where errors or concentrated risks may exist, and outlines practical next steps.
	Next step: Audit Readiness Calculator	**Next step: Audit Readiness Assessment**

Over 1,000 employees, or over 1,000 hires a year? Treat your result as one level higher. Paperwork fines run from $288 to $2,861 for each form with at least one substantive error, so headcount and hiring volume multiply every gap.

Get an outside look before a notice arrives. Check your audit readiness: **fragomenworkright.com/us/services/audit-readiness**

This scorecard is informational and is not legal advice.

More than a dozen audits. Zero fines.

The Client

A global workforce solutions company employing hundreds of thousands of associates nationwide.

The Challenge

The client managed thousands of I-9s every week across dozens of locations and multiple operating companies, each with its own onboarding workflows and technology. Physical I-9s were shipped from field offices to headquarters for audit and retention, and central compliance teams had no real-time access to completion, reverification or audit data.

What Changed

WorkRight replaced the paper process with automated validation and E-Verify integration, connected the client's applicant tracking and HR systems, and gave central teams real-time dashboards to audit internally and catch issues before they escalate. Monthly alignment meetings keep the program current as regulations and the business change.

The Result

More than a dozen government audits, and zero fines or penalties.

> “We've undergone more than a dozen audits, and not once have we been fined or penalized.”
>
> Senior Program Manager

More than a dozen audits

Zero fines or penalties

How WorkRight helps

WorkRight was developed by Fragomen, an immigration law firm with experience advising and defending employers in I-9 and E-Verify audits and investigations. That perspective informs an approach focused on how compliance programs are examined in practice, not only how forms are completed during onboarding.

> An approach focused on how compliance programs are examined in practice, not only how forms are completed during onboarding.

Employers can start with the **Audit Readiness Calculator**, a tool that uses organization and program details to estimate potential exposure and highlight the factors driving risk. The estimate is informational and is not legal advice.

An **Audit Readiness Assessment** can then provide a high-level review of the items most likely to be examined in a government audit, identify where errors or concentrated risks may exist, and outline practical next steps.

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Check your audit readiness



hello@fragomenworkright.com www.fragomenworkright.com

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