

I-9 Compliance: Employers' First Line of Defense against ICE Enforcement Actions

In our changing immigration enforcement landscape, employers can take one very basic, proactive step to prepare for increased ICE activity: review I-9 compliance.

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On January 20, 2025, President Trump declared a national emergency and issued several executive orders on immigration. Executive Order 14159 ("EO 14159"), titled "Protecting the American People Against Invasion," authorizes the Department of Homeland Security ("DHS") to:

- set new enforcement policies to address illegal entry, unlawful presence, and removal of those unlawfully present in the U.S.;
- expand expedited removal of those unlawfully present in the U.S.; and
- command state and local law enforcement officials to investigate, apprehend, and detain aliens.

The Executive Order also commands the Secretary of State, the Attorney General, and DHS to limit humanitarian parole, designations of Temporary Protected Status (TPS), and employment authorization, and denies "Sanctuary" jurisdictions access to federal funds.

This Executive Order, and the host of other immigration related EOs signed by President Trump, are likely to have some impact on employers. For example, we anticipate increased ICE enforcement actions, including I-9 audits and investigations, employer site visits and raids at workplaces or in immigrant communities to find undocumented workers.

A Proactive Step to Take Now

President Trump's immigration-related executive orders may result in increased scrutiny on workplace Form I-9 compliance. Employers should be prepared for an I-9 audit and reviewing existing I-9s is especially important as employers could eventually be asked to provide Form I-9s for all current employees (and some past employees, depending on recordkeeping requirements) if subjected to an ICE I-9 Audit.

When reviewing I-9s, employers should scan employee files for incomplete or missing forms, errors in form completion (e.g., incorrect document verification), and unauthorized workers (employees without proper work authorization).

Once an incomplete or improper I-9 has been identified, employers must take steps to correct it and make a record of doing so. This is how employers may properly correct I-9s per USCIS guidance:

- Draw a line through the incorrect information.
- Enter the correct information in the same section.
- Initial and date the correction.

USCIS recognizes that some I-9s may have multiple recording errors. In this situation, the agency states that employers are permitted to redo the error-riddled section on a new Form I-9 and attach it to the old form. A new I-9 can also be completed if major errors (such as entire sections left blank, or if Section 2 was completed based on unacceptable documents) need to be corrected. A note should be included in the file regarding the reason changes were made to an existing I-9, or why a new Form I-9 was completed.

In short: for simple corrections, employers should use the strikeout method, and for complete sections/major issues, employers should use a new form but ensure that the new form and old form are maintained together. Remember to annotate and initial/sign off on any changes and memorialize the audit for the business's records.

We also recommend that employers educate HR personnel and managers about Form I-9 compliance, the proper completion of forms, and the need to verify employment eligibility documents within the required time frame. Regular training can prevent common errors that often lead to penalties.

Using E-Verify for Additional Security

Although currently voluntary in New York and New Jersey—except in the case of some Federal contractors—employers looking to add an additional layer of immigration compliance may want to enroll in E-Verify.

E-Verify is an Internet-based system that compares information entered by an employer from an employee's Form I-9, to records available to the U.S. Department of Homeland Security and the Social Security Administration. This verification confirms an employee's eligibility to work in the United States.

Under the new administration, we anticipate that the use of E-Verify will expand and evolve, and employers must be prepared to adapt their practices and policies to ensure ongoing compliance.

Our employment counsel at Bochner PLLC stand ready to assist you in reviewing your personnel files, E-Verify practices, and correcting Form I-9s to defend against liability arising from an ICE I-9 audit or other form of workplace immigration enforcement. Partner/Employment Chair Jeffrey Douglas (jdouglas@bochner.law), Eric Dawson (edawson@bochner.law), and Chloë Brownstein (cbrownstein@bochner.law).