

## Immigration Check-Up: Is Your CAA I-9 Compliant?

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In light of recent immigration raids of worksites across the country and a significant increase in investigations by Immigration and Customs Enforcement (ICE), CAAs should take a closer look at their Form I-9 compliance to ensure that they understand their obligations as employers and use the most current version of the form. The United States Citizenship and Immigration Services (USCIS) requires employers to complete a Form I-9 to verify the identity of each individual hired for employment in the U.S. and determine that they are legally authorized to work in the U.S. This FAQ provides practical guidance for CAAs looking to do a checkup of their I-9 procedures, and also offers tips for CAAs that discover they are not in compliance with I-9 requirements.

### 1. How does a CAA comply with I-9 requirements?

All United States employers must complete Form I-9 for each individual employee, whether citizen or noncitizen, who is hired in the United States after November 7, 1986. The Form I-9 must be completed in order to verify the individual's identity and employment authorization. On the form, the employee must attest to his/her employment authorization, and the employee must present to their employer documents evidencing identity and employment authorization. The employer must examine the employment eligibility and any identity documents to determine whether the documents reasonably appear to be genuine and to relate to the employee. The employer then must record the document information on the Form I-9, and keep the form available for inspection for a designated time period.

U.S. Citizenship and Immigration Services (USCIS) operates an electronic employment confirmation system called E-Verify, which compares information from Forms I-9 with government records to help employers confirm that an employee is authorized to work in the U.S. The E-Verify system is free, and use of E-Verify to confirm the work eligibility of employees is voluntary for most employers (except in certain states that require all employers to register with E-Verify, or where certain state and federal contractors are required to use E-Verify). E-Verify is fast and accurate, helping employers avoid hiring and training individuals who might not be eligible for employment in the U.S. Even where E-Verify is used, employers must still submit Forms I-9 for each newly hired employee in the U.S., and cannot use the system selectively for employees with certain immigration statuses. More information on the E-Verify confirmation system is available at [www.e-verify.gov/](http://www.e-verify.gov/).

Employers must also retain completed Forms I-9 for a certain period of time. USCIS offers instructions on the webpage [Retaining Form I-9](#) for calculating how long an employer must

keep the Form I-9 on file for each employee, along with all copies that were made of the employee's documents. There are various ways to store these forms, which USCIS describes on its webpage [Storing Form I-9](#). No matter how you store your Form I-9, however, you must be able to present them to government officials for inspection within 3 business days after the forms were requested.

## 2. How can a CAA conduct an internal audit of its Forms I-9?

While not required by law, an employer may conduct an internal audit of its Forms I-9 to ensure ongoing Form I-9 compliance. An employer may choose to review all Forms I-9, or a sample of Forms I-9 selected based on neutral and non-discriminatory criteria. An employer should note, however, that penalties for violations of the employer sanctions provision and the anti-discrimination provision of the Immigration and Nationality Act may be imposed even if an internal audit has been performed.

Internal audits allow employers to ensure forms have been completed accurately, and to make corrections if any errors are found. USCIS has developed the following [Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits](#), which contains further guidelines for a CAA to follow if conducting an internal audit.

## 3. What should the CAA do if it has discovered it is not in compliance with I-9 requirements?

If an employer discovers an error or omission in a Form I-9, it should follow the USCIS [Guidance for Employers Conducting Internal Employment Eligibility Verification Form I-9 Audits](#), which covers many different possible issues that may arise including:

- If an employer discovers a missing Form I-9, a new Form I-9 must be completed by the employer and employee, and cannot be backdated. If the employee cannot produce acceptable documentation or refuses to complete Section 1 of the Form I-9, he or she cannot work for pay.
- An employer should not conceal any changes made on the Form I-9, or backdate the Form I-9.
- An employer cannot correct errors or omissions in Section 1 of Form I-9 (containing employee information to be filled out by the employee). Instead, the employer should ask the employee to correct the error. Employees needing assistance to correct or enter omitted information in Section 1 may use the assistance of a preparer and/or translator.
- An employer may only correct errors made in Section 2 (containing information recorded by the employer and verification that the employer has reviewed Section 1) or Section 3 (containing reverification of the employee's work eligibility when an employee's employment authorization or employment authorization documentation expires). An employer that made multiple errors in Section 2 or 3 of the form may redo the section(s) containing the errors on a new Form I-9, and attach it to the previously completed form, along with an explanation of the changes made.
- If the employee is no longer working for the employer, the employer should attach to the existing form a signed and dated statement identifying the error or omission and explaining that the corrections could not be made because the employee no longer works for the employer.

If any other issues arise while conducting a self-audit, the employer should visit the USCIS FAQ [I-9 Central: Self Audits](#).

#### 4. What to do if the CAA is inspected?

Officials from the U.S. Department of Homeland Security, employees from the Immigrant and Employee Rights Section at the U.S. Department of Justice, and employees from the U.S. Department of Labor may inspect an employer's Form I-9. Employers will generally receive a written Notice of Inspection at least three days before the inspection; however, subpoenas and warrants can also be used to obtain the forms without providing three days' notice.

During an inspection, the employer must (1) retrieve and reproduce electronically-stored Forms I-9 and any other requested documents; (2) provide the necessary hardware and software to inspect electronic documents; and (3) provide any existing electronic summary of the information recorded on the Form I-9. A refusal or delay of an inspection may be a violation of the law. See [Inspections](#) for more information.

#### 5. What are the potential penalties for failing to comply with a CAA's I-9 requirements?

Employers may fail to comply with their I-9 obligations in a number of ways. USCIS can assess penalties for the following employer violations:

- Knowingly hiring, or knowingly recruiting or referring for a fee, an unauthorized alien for employment in the United States or knowingly continuing to employ an unauthorized alien in the United States;
- Failing to comply with Form I-9 employment verification requirements;
- Committing or participating in document fraud to satisfy a requirement or benefit of the employment verification process;
- Committing document abuse;
- Unlawful discrimination against an employment-authorized individual in hiring, firing, or recruitment or referral for a fee;
- Failing to notify DHS of a Final Nonconfirmation (FNC) of an employee's employment eligibility;
- Requiring an individual to post a bond or security or to pay an amount or otherwise to provide financial guarantee or indemnity against any potential liability arising under the employment verification requirements; and
- Engaging in a pattern or practice of hiring, recruiting or referring for a fee unauthorized aliens.

Penalties can include civil fines and/or criminal penalties (when there is a pattern or practice of violations), debarment from government contracts, and a court order requiring the employer to pay back pay to, or to hire, the individual discriminated against. For more information about I-9 penalties, see [Penalties](#).