

HOW TO AVOID I-9 PENALTIES

It was a rough way to ring in the new year: Black & Blue Steak and Crab Restaurant in Rochester, New York started off 2014 with an \$88,000 fine from Immigration & Customs Enforcement (ICE). The cause? Failure to properly manage and document its Form I-9 screening process.

First created as a result of the Immigration Reform and Control Act of 1986, Form I-9 is the federal government’s tool for verifying that workers are eligible for employment in the U.S. The form underwent its most recent revision in March 2013. The new version comes with a 69-page instruction booklet that covers everything from hiring underage workers (have a parent or guardian sign on their behalf) to the intricacies of verifying Employment Authorization Documents.

Black & Blue Restaurant wasn’t alone. Months after issuing the revised form ICE made headlines when it sent a wave

of Notices of Inspection (NOI) to 1,000 businesses in late 2013. An NOI sets off a 72-hour countdown, during which the targeted business must gather all of its original Forms I-9 to submit for ICE inspection.

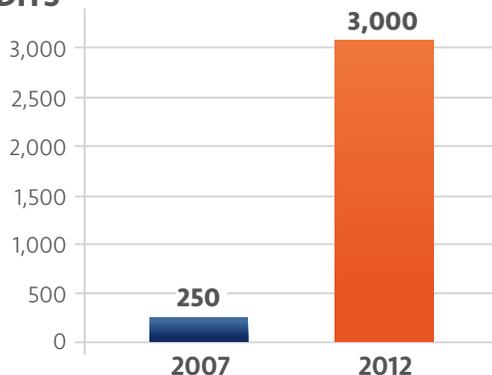
Contrary to popular belief, an ICE inspection isn’t the same as an Immigration and Naturalization Service (INS) “raid” in search of undocumented workers. Instead, ICE targets employers’ screening and management processes.

In 2007, ICE conducted approximately 250 audits. By 2012, the number had ballooned to more than 3,000. Fines in 2009 hovered around \$1,000,000. By 2012, that figure hit \$13,000,000 and the trend shows no signs of slowing.

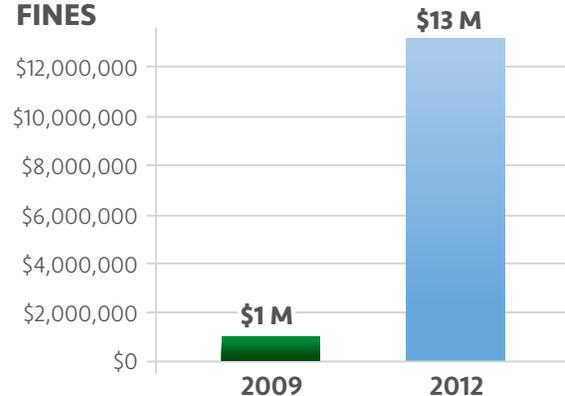
With robust resources at its disposal (ICE is the largest enforcement agency within the Department of Homeland Security), and no clear legislative path to immigration reform in sight, experts predict the pace will continue.

GROWTH OF ICE AUDITS AND PENALTIES

AUDITS



FINES



QUIRKS OF THE FORM I-9

- The current Form I-9 is nine pages long and you must provide all nine to an applicant: the instructions (pages 1-6) and the form pages.
- No matter how busy you are, it's not okay to delegate the task of reviewing the actual documents. The person who signs the form on behalf of your organization must be the same person who reviews the documents.
- When correcting a paper Form I-9, you may not use white correction fluid or black permanent marker. To correct an error, draw a line through it, write in the corrected info, and initial and date the change.
- The same person who originally filled out the Form I-9 should also make any corrections. If this isn't possible, then fill out a new form entirely, write a memo, and attach it to the old form.

WHICH BUSINESSES ARE MOST LIKELY TO BE TARGETED FOR AN ICE INSPECTION?

There's no clear rhyme or reason, but industries that have a high turnover rate (such as restaurants and retail) and those that tend to attract workers without proper authorization to work in the U.S. are most likely to attract attention. Other triggers for ICE inspections can be:

- a history of previous violations
- tips from former or current employees
- tips from other law enforcement agencies
- tips from the general public
- random selection



TIP Don't assume that if you're a small employer or don't hire foreign workers, your business is automatically exempt from an ICE inspection.

E-VERIFY

This free online system checks applicants' I-9 information against federal records, including Department of Homeland Security data and Social Security Administration records, to confirm employment eligibility. More than 500,000 employers use E-Verify at more than 1.4 million hiring sites. It's fast and accurate.

Unlike the paper Form I-9, E-Verify requires that the job applicant provide a valid social security number. It also limits documents from list B to those that have photos. E-Verify may not be used to re-verify expired employment authorization.

WORST PRACTICES IN MANAGING FORM I-9

Even with a 69-page instruction booklet in hand, it's easy to overlook some basic requirements of good Form I-9 hygiene. Common errors include:



Having two different people fill out the form.

The same HR representative who fills out Section 2 must also sign the bottom.



Overdoing the documentation. It's not necessary to get documents from lists A, B and C. Use either one document from list A, or two documents pulled from lists B and C.



Requiring a specific document. It's illegal to demand that an applicant produce a certain document. The applicant may provide any correct combination of the documents on the lists.



Stapling photocopies of documents (even if they're the correct ones) in lieu of filling out Section 2. You're required to fill out the form completely.



Using the I-9 process to pre-screen applicants. This is never acceptable and it makes your organization vulnerable to charges of discriminatory hiring practices.



Inconsistent record-keeping. If you make copies of one applicant's documents, then you must make them for all applicants' records.



Rejecting documents with future expiration dates. These documents are valid—but you'll need to set up a reminder system to re-verify the expired documents (using Section 3 of the I-9) at the appropriate times.



Requiring a social security number. The E-Verify system requires this; otherwise, the applicant needn't provide a social security number.

E-VERIFY STATE BY STATE

- Arizona and Mississippi require all employers to use E-Verify.
- South Carolina encourages the use of E-Verify by all employers.
- Seven states require public contractors to use E-Verify:
 - Colorado
 - Missouri
 - Oklahoma
 - Utah
 - Georgia
 - Nebraska
 - Rhode Island
- Several states require their state agencies to participate in E-Verify:
 - Colorado
 - Idaho
 - Missouri
 - North Carolina
 - Rhode Island
 - Georgia
 - Minnesota
 - Nebraska
 - Oklahoma
 - Utah

Unlike the paper Form I-9, E-Verify requires that the job applicant provide a valid social security number. It also limits documents from list B to those that have photos. E-Verify may not be used to re-verify expired employment authorization.


TIP

Some states require employers to use E-Verify, and the number is growing. For employers in most states, it is still voluntary.

AN OUNCE OF PREVENTION: SELF-AUDITING

The best way to avoid ICE penalties is to perform a self-audit. It offers a clear picture of your records and pinpoints problem areas that need your attention. When embarking on a self-audit:

- Have a Form I-9 for every current employee hired since 1986.
- Cross-check current employees and former employees with your I-9 files.
- Use the latest iteration of the Form (currently March 2013).
- Complete a Form I-9 within three days of a new hire's start date.
- Review the forms for red flags such as:
 - Missing dates/addresses
 - Information placed in the wrong fields
 - Inconsistent copying (i.e., there are copies of documents attached to some employees' Forms I-9, but not to others)
 - Expired documents needing re-verification.
- Re-verify Forms I-9 with expired documents.

10 COMMON PROBLEMS AND SOLUTIONS

PAPER FORMS I-9	TECHNOLOGY SOLUTION
Outdated version of Form I-9 used	Automatically updates as new versions are released
Missing information in Section 1 or Section 2	Enforced entry for all required Section 1 and Section 2 fields
Post Office Box provided for address	Section 1 address validation prevents entry of P.O. Box as address
Missing employee or employer signature	Electronic signatures required for form completion
Invalid document number provided	Validation against required document number formats (e.g., Alien Registration Number, Form I-94 Admission Number, etc.)
Invalid document provided	Prevents entry of document types not included in List A, B and C
Invalid document combination provided	Enforces choice between List A OR List B and List C documents
Expired document provided	Built-in validation prevents entry of expired documents
Need to keep current with expiring and updated employment eligibility authorization documents	Automatic reverification tracking for expiring documents
Unclear I-9 process and workflow	Automatic tracking of I-9 workflow for audit trail

All of the above problems can be handled with automation of the Form I-9 process in the TalentWise Hire™ platform.

I-9 BEST PRACTICES



Retain the Form I-9 for three years from an employee's date of hire, or one year after termination — whichever is later.



If you use electronic storage, make sure that your system can **print legible copies of the Form I-9 on demand**.



If you use a third-party vendor, ensure that someone in your organization has **easy access to Forms I-9 and other records**.



Destroy Forms I-9 outside the retention range: three years from an employee's date of hire, or one year after termination — whichever comes later.



If you discover an error on a paper form, **fix it by lining it out and initialing the change**, but don't destroy the original.



TIP

ICE sees self-auditing as a best practice. This step demonstrates your organization's willingness to take compliance and consistency seriously.

ENSURE YOUR PEACE OF MIND

Managing your organization's Forms I-9 process is a complex task. All across the country, ICE inspections have become an important tool in the federal government's approach to enforcing immigration law. Consider making your Form I-9 process electronic and part of a streamlined hiring process.

The TalentWise Hire platform can help organizations of any size manage the Form I-9 complexities by ensuring that forms are correct, consistent and properly stored. Also, unlike paper forms that may be housed in multiple locations across the globe, electronic storage means the forms are immediately available from any location in the event of an audit.

With TalentWise, organizations can eliminate stacks of paperwork, including Forms I-9, and reduce errors. Improve your Form I-9 compliance and your peace of mind with TalentWise.



REMEMBER: In the event your organization is faced with an ICE inspection, you have only **three days** to pull your Forms I-9 together and present them for review.



Visit TalentWise.com's Resources page and see how the world's largest car sharing network increased its correctly completed Forms I-9 to 100%.

ABOUT TALENTWISE

TalentWise is a technology company that has completely transformed one of the most critical tasks that every company depends upon for success: hiring new employees. TalentWise streamlines the hiring process from start to finish with built in compliance, allowing HR to manage offer letters, screening and onboarding activities with just a single solution.

TalentWise Hire has simplified the hiring process, from the time HR offers a candidate a position to a new hire's first day on the job. HR can manage hiring tasks electronically, including offer letters, background checks, drug screening, E-Verify, new hire forms such as I-9, W-4, and more. The result is an efficient and compliant hiring process that delivers a great experience for HR professionals and candidates alike. It's delivered via software as a service (SaaS) so it's available online, anytime and anywhere there's an Internet connection.



DISCLAIMER: The information provided by TalentWise is for the convenience of its clients and for educational purposes only. Nothing provided within this document should be considered to be legal advice or guidance. Readers should consult their own legal counsel to determine their legal requirements.



CONNECT WITH TALENTWISE

© 2014 TALENTWISE, INC. 1.877.893.1665 / SALES@TALENTWISE.COM / TALENTWISE.COM