

# I-9 Audits: What Companies Can Do To Reduce Liability Later

Valentine Brown,&nbsp;Duane Morris LLP



**Here is what manufacturers should do to ensure their I-9 processes are in compliance with federal immigration laws, so as to avoid costly fines and disruptions.**

Recently, in the course of one week, Immigration and Customs Enforcement (ICE), the federal agency charged with enforcing the nation's immigration laws, instituted 1,000 new worksite investigations. Targeted industries included the usual suspects: food manufacturing, fast food, restaurants and agriculture. In Fiscal Year 2010, ICE collected more than \$6.9 billion in civil fines resulting from worksite investigations. Criminal fines, restitution and forfeitures totaled more than \$36 billion.

The primary tool of an ICE worksite investigation is the dreaded I-9 audit. For the unlucky recipients of an audit notice, it is an expensive, disruptive and tedious process that includes either an onsite ICE visit to review all of a company's I-9 forms, or a so-called desk audit that requires the employer to submit all I-9s, supporting documentation and employee payroll information to ICE within three days of the audit notification.

Once the investigation is complete, ICE will tabulate the number and type of violations uncovered in the audit. This information will be used to calculate potential civil fines, which start at \$110 per I-9 form. Fines can be increased based upon the size of the company, percentage of forms with errors, prevalence of undocumented

## **I-9 Audits: What Companies Can Do To Reduce Liability Later**

Published on Industrial Maintenance & Plant Operation (<http://www.impomag.com>)

---

workers and the seriousness of the errors. In Fiscal Year 2010, the average civil fine paid by an employer was \$29,000, but several companies paid \$1 million or more.

Companies may attempt to negotiate reduced fines or request review of ICE's calculations by an administrative law judge. Both strategies are often successful in reducing the amount a business must pay. However, most settlement agreements include additional concessions such as regular ICE site visits for I-9 review and agreements to participate in E-Verify, among other possibilities.

### **Minimizing Exposure**

There are several steps a company can take to minimize exposure and assess its current state of I-9 compliance.

#### *1) Have Your I-9s Audited Voluntarily*

A voluntary I-9 audit conducted by a human resources consultant or an immigration attorney has immense benefits for a company that is concerned about areas of I-9 compliance vulnerability. Typical I-9 error rates start at 15 percent. A competent auditor will identify all forms that need corrections and show the company how to make those corrections legally. The audit will also provide statistics on the errors, which will allow the company to estimate civil fine liability, tailor training to particular staff, issues or locations and make meaningful changes to its I-9 process. The audit may even uncover undocumented workers and missing I-9s and will identify I-9 forms that can be legally purged.

When done properly, a voluntary audit will also provide the employer with a "good faith defense" to violations uncovered in a real I-9 audit conducted by ICE. To be clear, I-9 violations are a strict liability offense, meaning that even employers with the best of intentions are liable for civil fines when mistakes or omissions are made on the form. Therefore, the "good faith defense" does not exonerate an employer but can be used in negotiations to reduce or eliminate fines imposed by ICE.

#### *2) Conduct a Top-to-Bottom Review of Your I-9 Process*

Most companies do not have written procedures and involve far too many employees in their I-9 process. The review should include the drafting or revision of written policies and process manuals using the most up-to-date USCIS I-9 Employer Handbook recommendations. The written materials should address the "who," "what" and "where" of the internal I-9 completion process. In addition, the materials should establish policies for actions to be taken when documentation is not timely presented by employees, when the company is notified of a Social Security mismatch and when re-verification is not possible due to the expiration of an employee's work authorization documents.

#### *3) Appoint a Responsible Officer*

This recommendation is by far the easiest and least expensive to implement. Regardless of the I-9 process in place right now, an employer should appoint one

## **I-9 Audits: What Companies Can Do To Reduce Liability Later**

Published on Industrial Maintenance & Plant Operation (<http://www.impomag.com>)

---

person to be the final reviewer of all I-9s created. This person should be the last to view the I-9 before it is properly recorded in any tickler systems and filed. The Responsible Officer should have the authority to go back to the human resources employee who completed Section 2 of the form and have that person correct any mistakes or provide any missing information or documentation.

In addition, the Responsible Officer will be tasked with maintaining the systems that indicate when an I-9 can be purged and when one needs to be re-verified due to work authorization expiration. The Responsible Officer should be provided with 3-6 hours of training per year and should be given direct access to immigration counsel so that problematic documentation issues can be quickly resolved.

### **Act Now**

Even the smallest steps an employer takes now to identify and correct shortcomings in its I-9 compliance system can greatly reduce liability in case of an I-9 audit. Even a 2 or 3 percentage point reduction in error rates can have a huge impact on ultimate fine totals. An even bigger impact can result from a company's pre-ICE audit identification and termination of undocumented workers. This act sheds a huge positive light on a company's intention to comply with the law and is a factor often cited by ICE and judges in reducing and eliminating civil fines and criminal charges.

**Source URL (retrieved on 12/28/2014 - 12:42pm):**

[http://www.impomag.com/articles/2011/04/i-9-audits-what-companies-can-do-reduce-liability-later?qt-most\\_popular=0](http://www.impomag.com/articles/2011/04/i-9-audits-what-companies-can-do-reduce-liability-later?qt-most_popular=0)