

Navigating Immigration & ICE Enforcement in Construction: What Employers Need to Know in 2025

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Targeted Industries for Immigration Enforcement:

- * hospitality
- * agriculture
- * **construction**
- * manufacturing
- * healthcare, caregiving



I-9 Forms Audits



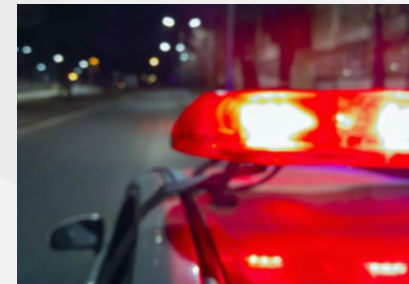
Wha is the I-9 Form?

- I-9 Forms—also titled “Employment Eligibility Verification” Form, this is the form that all employers are required to complete and keep, with supporting documentation, prior to allowing any person to work for the employer
- Note: employers are required by IRCA to keep I-9 forms and supporting documents for all current employees as well as for former employees for at least three years or one year after an employee is terminated (whichever is longer)
- For more information, see <https://www.ice.gov/factsheets/i9-inspection>



Who Conducts I-9 Audits and Why?

- U.S. Immigration and Customs Enforcement (ICE) and Department of Homeland Security (DHS) are among the federal agencies tasked with compliance inspections of I-9 documentation pursuant to the Immigration Reform and Control Act (IRCA) and the Immigration and Nationality Act (INA)
- Why Am I Getting Audited? – ICE conducts some random audits of I-9 documentation, but *much more often* an audit is triggered by a disgruntled current or former employee (often to get “whistleblower” protection), rejected job applicants, competitor contractors, confidential informants/criminal defendants, DHS/ICE data analytics, and information from other agencies (FBI, IRS, DOJ, etc.)
- What do they already know? Audits triggered by current or former employees or competitors may mean that ICE/DHS already has evidence of violations!

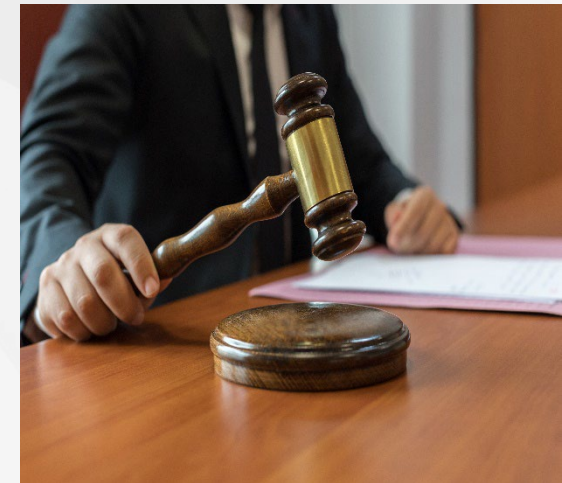


How Are I-9 Audits Conducted?

- ICE and DHS typically use a document called a “Notice of Inspection” (NOI) and subpoena as the beginning point for an inspections of I-9 documentation
 - The NOI is typically served on an employer and the employer is given three business days to fully comply with the NOI requirements
 - An NOI and supporting subpoena can seek numerous categories of documents, including I-9 forms, supporting documentation, payroll records, time cards, employee personnel files, employee lists with contact information and home addresses, former employee information, business licenses, tax records, articles of incorporation and bylaws, and other company records
 - If ICE/DHS finds discrepancies, the company is given 10 days to correct through a “Notice of Correction”
- ICE and DHS can conduct surprise on-site inspections!
 - ICE and DHS, with or without other law enforcement present, can seek the same documents through surprise on-site inspection, although this is rare
 - For surprise on-site inspections, companies must immediately provide the records listed in the subpoena or other court order/signed warrant

Why Do I Need to Comply with An I-9 Audit?

- Failure to comply with a Notice of Inspection can lead to:
 - Surprise inspection and seizure of workplace and records
 - Administrative fines and penalties for uncorrected errors or substantive errors from \$281 to over \$5,000 per violation
 - Referral to DOJ for criminal proceedings with potential jail time or criminal fines, up to five years in prison or more!
 - Fines vary based on business size, good faith, seriousness of violation, number of unauthorized workers, and history of compliance
- DHS and ICE may also:
 - Seize and provide documents and information to FBI or DOJ for investigation of additional crimes such as harboring illegal aliens, immigration fraud, tax evasion
 - Issue Order of Removal to illegal alien employees
- Noncompliance is **NOT A GOOD OPTION!**
 - (hint: whenever a government agency is asking for something, it is good to respond)



How Do I Know Results of an I-9 Audits?

ICE or DHS will provide the employer with one or more of the following:

- “Compliance Letter” may be issued notifying the employer that it has been found to be in compliance with the I-9 requirements
- “Notice of Suspect Documents” may be issued notifying the employer of one or more employees’ documents being suspicious, and reminding the employer of potential civil and criminal fines and penalties for noncompliance, giving employer a chance to provide the notice to the employee(s) and get additional documents from the employee(s) proving employment eligibility
- “Notice of Technical or Procedural Failures” may be issued requiring technical deficiencies in the documents to be corrected within 10 business days
- “Warning Notice” may be issued for substantive violations or if other Notices not responded to or complied with, and subjecting employer to future follow-ups
- “Notice of Intent to Fine” may be issued for substantive violations, uncorrected errors, intentional violations, assessing a proposed fine with information on how to request a hearing before an administrative law judge

How Can I Be Prepared for an I-9 Audit?

- **Conduct an I-9 Forms Self Audit!**
 - I-9 forms and supporting documentation should be kept in separate files, segregated from personnel files
 - Review existing I-9 forms and supporting documentation, or a large representative sampling of them, to ensure all forms are signed in all places required, all required information is included, and all supporting documentation is on file
 - If you find deficiencies, contact the employee(s) and ask for revised I-9 forms and supporting documentation - you can do this anytime if you conduct an audit and find problems (*but you cannot single out or target any employee based on race/national origin!*)
 - If you continue to be concerned, contact an immigration or employment lawyer for advice

Immigration Enforcement Actions

New Presidential Executive Orders Impact Contractors and Other Employers

Executive Orders Relating to foreign-born workers:

1. Proclamation Guaranteeing the States Protection Against Invasion— Suspending entry through southern border of “aliens” (Immigration and Nationality Act), suspending asylum/refugee entry, requires aliens in U.S. to have medical/criminal history information or face deportation
2. Executive Order Realigning the U.S. Refugee Admission Program— Program suspended with limited exceptions
3. Executive Order Protecting the American People Against Invasion— Requiring faithful execution of immigration laws and removal, directing enforcement of criminal laws relating to immigration including against those facilitating presence of “illegal aliens”

Immigration “Raids”

- A “raid” by immigration authorities could include a warrant to arrest a person or a search warrant served by law enforcement authorities
 - ICE *and other federal agencies* are authorized to conduct such events
 - Some states and cities allow local law enforcement to assist, others do not
- How can I be prepared?
 - Prepare and maintain a procedure for reception/worksites supervisor to follow if “raid” occurs
 - Train all employees on the company’s procedure for a “raid”
 - Mark all non-public areas as “private” so only valid warrant allows access
 - Provide employees with information on their rights (**red cards!**) and immigration resources including names of immigration lawyers if employees need assistance

Preparations Before Immigration “Raids”

- What should my “Immigration Raids Procedure” include?
 - Designate **primary contact person(s)** if ICE or other agents come knocking
 - Request to **see the warrant**, ensure it is issued by a court (not just an administrative agency), signed by a judge, and read what the warrant allows the authorities to do
 - Provide only **truthful** information in response to questions
 - Do not facilitate employees’ fleeing (could lead to criminal charges)
 - **Accompany the authorities** during a search of private areas, do not interfere, allow them to perform the tasks in the warrant, take notes/videorecord if allowed to do so

What Not to Do if ICE/Immigration Authorities Arrive

- Don't lock the doors and prohibit ICE from entry if they have a valid warrant – this could lead to criminal obstruction charges!
- Don't ever exclude ICE from public areas of the business or jobsite
- Who “controls” an open jobsite is a tricky issue, err on the side of caution on a nonsecure/open jobsite and consider the site public and allow ICE to enter the area
- Don't interfere with ICE in carrying out a valid warrant (search or arrest) and don't allow employees to harass or interfere with ICE authorities
- Don't text or contact employees thought to have immigration issues to tell them to leave the worksite or assist them in using “back door” to escape

Related Issues and Questions?



Thank You

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