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## The Deceptively Simple Form I-9

In March 2013, after receiving thousands of comments, the U.S. Citizenship and Immigration Services (USCIS) issued an updated Form I-9. The goal was to simplify the Form, reformat it, and clarify the instructions to reduce errors and omissions. The new Form I-9 is two pages, and the instructions have ballooned to seven detailed pages.

### How important is accurate completion of the Form I-9, really?

U.S. Immigration and Customs Enforcement (ICE) reportedly spent \$138 million in worksite enforcement efforts in 2012, which resulted in over 3,000 employer audits, more than twice the number audited in 2009. In addition, in 2012, 238 company managers were arrested as a result of enforcement efforts, and nearly \$13 million in penalties were imposed, a significant increase over prior years. According to an Associated Press report, the median fine in 2011 was \$11,000, with a high of nearly \$400,000. Many of these fines were imposed for purely technical violations (i.e., administrative errors, such as incomplete forms), rather than employing undocumented workers.



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In the grand scheme of things, the chance of an employer being randomly audited is relatively small. However, throw a disgruntled former employee into the mix with a complaint and the chance of being audited grows exponentially.

### The dreaded audit.

In recent audits on which we have worked, an investigator from the Department of Homeland Security (DHS) typically appears at the worksite to deliver to the company representative a Notice of Inspection (NOI) requesting various documentation relating to immigration compliance including I-9 Forms for several hundred - or several thousand - current employees, as well as information relating to former employees, no match letters, I-9 processes, and computer data maintenance and security, among other things. Pursuant to an NOI, the company has just **72 hours** to provide the requested documentation. A mad scramble generally ensues.

The lessons learned from such audits? **Before** being audited, companies should ensure that I-9 documentation is maintained in an easily accessible manner. Valuable time is wasted if the clock is ticking away while HR representatives pull I-9 Forms from countless separate files or multiple far-flung locations. An independent audit by the company, preferably conducted by counsel or with counsel's guidance, can significantly lessen the heartburn of an unannounced inspection by allowing the company an opportunity to correct many errors well before any government audit takes place. (One caveat is that

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there are right ways - and wrong ways - to make corrections, which is why counsel should be involved in this process.) An error rate of 75-90 percent is not uncommon in self-audits.

### **Know the I-9 Form.**

Training personnel who are responsible for completing I-9 Forms is critical. For companies with field operations, remote workers, or numerous locations away from the main Human Resources function, training and oversight are especially important. It is advisable to have a designated representative(s) review the completed forms upon receipt to promptly determine whether corrections are needed and to ensure that those corrections get made.

A full version of this article ran in *Law Week Colorado* on May 20. [Click here to read the article.](#)

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