

# I-9 Compliance in the “ICE Age”

**IN THE LAST YEAR, EMPLOYERS HAVE SEEN A FIVE-FOLD INCREASE IN NOTICES OF INSPECTION (“NOI”) ISSUED BY THE IMMIGRATION AND CUSTOMS ENFORCEMENT AGENCY (“ICE”),** fines in excess of \$6,000,000, substantial asset forfeitures and an increasing number of owners and senior managers being sent to jail for immigration violations.

This new “ICE age” has brought immigration compliance to the forefront of the construction industry as ICE has made it quite clear that it will pursue with a vengeance employers who violate immigration laws, no matter their size, location or level of sophistication.

One of the most significant new developments has been ICE’s efforts to seek substantial monetary fines and penalties against employers for what historically were considered paperwork problems with Form I-9. At first glance, this one page form is a pretty simple looking document; however, as the saying goes, the devil is in the details. In practice, Form I-9 is a difficult document to understand and complete. Following the best practices outlined below can help a Company manage risk and limit exposure regarding their I-9 practices.

### Best Practices

- Have a well defined corporate immigration philosophy.
- Institute carefully drafted SOP’s (Standard Operating Practices) that are consistently followed.
- Train all personnel involved with the I-9 process.
- Make the choice of whether to retain copies of documents presented by employees based on a full assessment of the desired level of compliance and tolerance for risk.
- Adopt an effective “tickler” system for re-verification to achieve continued compliance.
- Implement a well-defined and consistent

methodology to address discrepancy notices (e.g. “No-Match” letters).

- Develop and enforce policies that ensure proper retention and storage of Forms I-9 for the required period.
- Conduct self-audits, but only if you are committed to follow up on the results.
- E-Verify should be implemented as a part of your immigration compliance program and not as a substitute for solid I-9 practices.

### Electronic I-9 Systems

In the last few years many employers, often with the support of software vendors, have sought to make their I-9 process paperless. Choosing to handle I-9s electronically, however, is not as easy as just scanning away. Going paperless is technically and legally complex. There are very specific regulations and directives regarding electronic signatures, audit trails, system reliability and protection, document storage, maintenance and retrieval. Employers need to ensure that the system they choose complies with all the requirements of electronic I-9 regulations.

### Conclusion

If you believe that your I-9 practices are deficient, you have not conducted an internal audit (by trained staff), or if you are considering electronic I-9 systems, now is the time to act and correct the mistakes of the past. In this new “ICE age”, waiting for the Notice of Inspection or for ICE to show up at your door is simply playing with fire. ■



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