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11 Tips to Ensure That Your I-9 Forms Comply with Law

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) announced that it recently issued 1,000 I-9 audit notices to employers across the country. Failure to comply with I-9 requirements may result in significant civil fines and/or criminal penalties. Employers should review the following tips to help minimize their liability.

1. **Store Form I-9s in a separate file**. Form I-9s should not be maintained in employees' personnel files. Retaining Form I-9s in a separate file will help employers control who has access to the information contained in the Form I-9s, as well as make it easier for employers to conduct self-audits of the Form I-9s.
2. **Conduct self-audits at least once per year**. Employers should regularly review the completed Form I-9s to ensure compliance. Ideally, the self-review should be conducted by an immigration or employment attorney, or by a trained employee who was not involved in the day-to-day completion of the Form I-9s. Self audits provide employers with an opportunity to detect and correct errors, and also show a good faith effort to comply with all applicable laws.
3. **Ensure that Form I-9s are stored for the required period of time**. Employers must retain Form I-9s for all current employees. In addition, employers must keep each employee's Form I-9 for three years after the date of hire or one year after the termination of employment, whichever date is later. After this time period has passed, employers should securely destroy the Form I-9s.
4. **Timely complete Form I-9s**. Section 1 of Form I-9s must be completed at any time between the employee's acceptance of the job offer and his/her first day of employment. Ensure the employee correctly completes Section 1, because the employer is responsible for any fines if an employee fails to do so. Section 2 must be completed within three business days after the employee's first day of employment, unless the employee's employment will last less than three business days, in which case Section 2 must be completed by the employee's first day of employment.
5. **Do not require employees to present specific documentation**. Employers may not specify which documents they want employees to

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present. Instead, employees may present the proper combination of any document(s) that appear(s) on the Lists of Acceptable Documents.

6. **Reverify expired temporary employment authorization documents**. Employers should create a tickler system that reminds them when an employee's temporary employment authorization is expiring. Employers should ensure they reverify these employees' employment authorization documents no later than the earlier of the date the employment authorization or employment authorization document expires. Employers do not need to reverify passports, permanent resident cards or any "List B" document.
7. **Accept only unexpired and original documents**. When reviewing the documents presented by employees, employers may only accept unexpired documents. Additionally, employees must present original documents; photocopies are not acceptable.
8. **The Form I-9 must be the current version and in English**. Employers should ensure that they are using the most current version of the Form I-9, which is available online. In addition, unless the employer is located in Puerto Rico, the employer must complete the English version of the form. Employers must also provide employees with the official instructions on completing the Form I-9.
9. **Complete the translator section, if necessary**. Section 1 must be completed by the employee, unless the employee is physically unable to do so or does not understand enough English to do so. If someone other than the employee completes Section 1, that person must complete the Preparer and/or Translator Certification section and the employee must still sign or mark the certification block in Section 1.
10. **Correct errors with care**. Employers should correct errors on Form I-9s by making a single strike through the error with a different color of ink and noting the initials of the individual correcting the form and the current date. It is not acceptable to use correction fluid. If the reason for the correction is not obvious, employers should prepare a short memo detailing the reason for the correction and attach this memo to the Form I-9.
11. **Do not overdocument**. Employers should only record either (a) one document from List A or (b) one document from List B and one document from List C. Again, employers must allow employees to choose which document(s) they want to present from the Lists of Acceptable Documents.

Please contact any attorney in Reinhart's Immigration Legal Service Area if you

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have any questions regarding how to complete or correct Form I-9s. We would also be pleased to assist you in conducting a self-audit of your Form I-9s.

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