



Seven Critical Steps for Surviving an I-9 Audit

1. Notify the in-house attorney immediately. If the company does not have an in-house attorney, notify the owner or manager in charge.
2. Retain an attorney with significant experience handling employment-related immigration issues. Be sure the attorney is licensed to practice in the state where the I-9 forms are maintained.
3. Gather all I-9s and supporting documents. These forms should be well-organized in a secure location; however they should never be maintained within each personnel file. Doing so will make the entire personnel file open for inspection in the event of an audit and may increase the company's exposure to discrimination claims since supervisors may have access to the file.
4. Photocopy all forms and documentation for future reference, since the originals will most likely be off-site during the inspection.
5. Use current payroll records, hiring records, and termination records for comparing with I-9 forms. Identify any employees without an I-9 form on file and complete the form immediately since a form must be maintained on-file for all existing employees. It is important, however, not to back-date any forms. Remember, Form I-9 was enacted on November 6, 1986, as a part of the Immigration Control and Reform Act, so current employees who were hired prior to that date should not have a form on file. Also, of significant importance, employers are required to maintain the I-9 forms of former employees for three (3) years after the date of hire or (1) year after the date of termination, whichever is longer. With that in mind, remember that any forms on-site are open for inspection, even if they could have been discarded.
6. Evaluate the accuracy of each I-9 form and address any concerns immediately when making corrections where appropriate. Do not request new or alternative documents to update a form, since this may be deemed discriminatory. Although corrections can be made to I-9 forms, in some cases, a company may create more liability if corrections are made without legal guidance.
7. Confirm the "chain of custody" for the company's documents by having the ICE agent acknowledge, in writing, the exact number of original I-9s that have been relinquished.