ICE

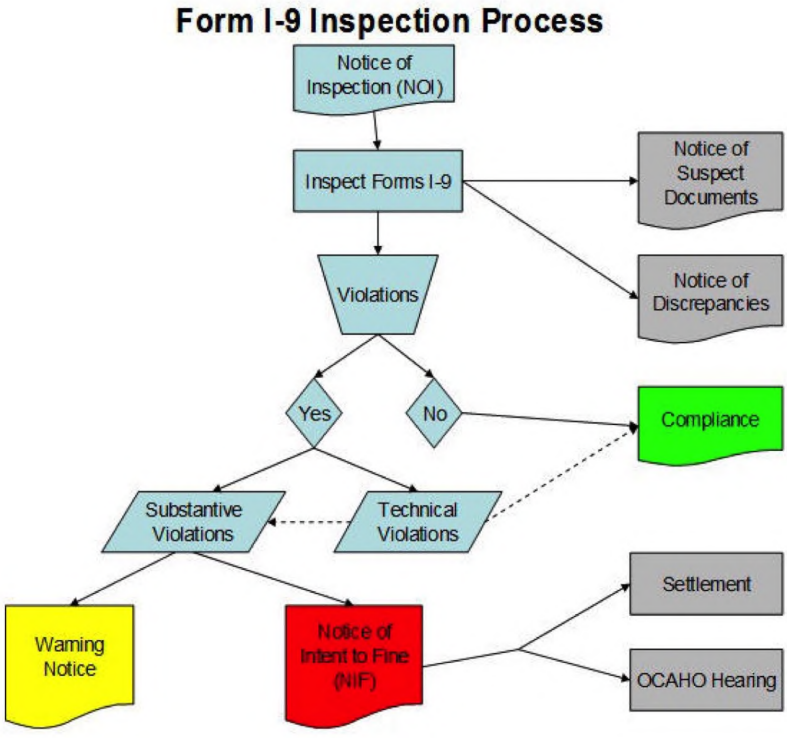
Report Crimes: Email or Call 1-866-DHS-2-ICE

Form I-9 Inspection Overview

FACT SHEET
January 8, 2018

On November 6, 1986, the enactment of the Immigration Reform and Control Act required employers to verify the identity and employment eligibility of their employees and created criminal and civil sanctions for employment related violations. Section 274A (b) of the Immigration and Nationality Act (INA), codified in 8 U.S.C. § 1324a (b), requires employers to verify the identity and employment eligibility of all individuals hired in the United States after November 6, 1986. 8 C.F.R. § 274a.2 designates the Employment Eligibility Verification Form I-9 (Form I-9) as the means of documenting this verification. Employers are required by law to maintain for inspection original Forms I-9 for all current employees. In the case of former employees, retention of Forms I-9 are required for a period of at least three years from the date of hire or for one year after the employee is no longer employed, whichever is longer.

Form I-9 Inspection Process



The administrative inspection process is initiated by the service of a Notice of Inspection (NOI) upon an employer compelling the production of Forms I-9. By law, employers are provided with at least three business days to produce the Forms I-9. Often, ICE will request the employer provide supporting documentation, which may include a copy of the payroll, list of current employees, Articles of Incorporation, and business licenses.

ICE agents or auditors then conduct an inspection of the Forms I-9 for compliance. When technical or procedural violations are found, pursuant to INA §274A(b)(6)(B) (8 U.S.C. § 1324a(b)(6)(B)), an employer is given ten business days to make corrections. An employer may receive a monetary fine for all substantive and uncorrected technical violations. Employers determined to have knowingly hired or continued to employ unauthorized workers under INA § 274A(a)(1)(a) or (a)(2) (8 U.S.C. § 1324a(a)(1)(a) or (a)(2)) will be required to cease the unlawful activity, may be fined, and in certain situations may be criminally prosecuted. Additionally, an employer found to have knowingly hired or continued to employ

unauthorized workers may be subject to debarment by ICE, meaning that the employer will be prevented from participating in future federal contracts and from receiving other government benefits.

Monetary penalties for knowingly hire and continuing to employ violations range from $375 to $16,000 per violation, with repeat offenders receiving penalties, at the higher end. Penalties for substantive violations, which includes failing to produce a Form I-9, range from $110 to $1,100 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations.

ICE will notify the audited party, in writing, of the results of the inspection once completed. The following are the most common notices:

- **Notice of Inspection Results** – also known as a "compliance letter," used to notify a business that they were found to be in compliance.
- **Notice of Suspect Documents** – advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has determined that an employee is unauthorized to work and advises the employer of the possible criminal and civil penalties for continuing to employ that individual. ICE provides the employer and employee an opportunity to present additional documentation to demonstrate work authorization if they believe the finding is in error.
- **Notice of Discrepancies** – advises the employer that based on a review of the Forms I-9 and documentation submitted by the employee, ICE has been unable to determine their work eligibility. The employer should provide the employee with a copy of the notice, and give the employee an opportunity to present ICE with additional documentation to establish their employment eligibility.
- **Notice of Technical or Procedural Failures** – identifies technical violations identified during the inspection and gives the employer ten business days to correct the forms. After ten business days, uncorrected technical and procedural failures will become substantive violations.
- **Warning Notice** – issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer.
- **Notice of Intent to Fine (NIF)** – may be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations.

In instances where a NIF is served, charging documents will be provided specifying the violations committed by the employer. The employer has the opportunity to either negotiate a settlement with ICE or request a hearing before the Office of the Chief Administrative Hearing Officer (OCAHO) within 30 days of receipt of the NIF. If the employer takes no action after receiving a NIF, ICE will issue a Final Order. If a hearing is requested, OCAHO assigns the case to an Administrative Law Judge (ALJ), and sends all parties a copy of a Notice of Hearing and government's complaint, thus setting the adjudicative process in motion.

The Notice of Hearing spells out the procedural requirements for answering the complaint and the potential consequences of failure to file a timely response. Many OCAHO cases never reach the evidentiary hearing stage because the parties either reach a settlement, subject to the approval of the ALJ, or the ALJ reaches a decision on the merits through dispositive prehearing rulings.

Determination of Recommended Fine

The cumulative recommended fine set forth in the NIF is determined by adding the amount derived from the **Knowing Hire / Continuing to Employ Fine Schedule** (plus enhancement or mitigation) with the amount derived from the **Substantive / Uncorrected Technical Violations Fine Schedule** (plus enhancement or mitigation). Typically, the date of the violation shall be the date ICE conducted the Form I-9 inspection and not the date the Form I-9 was completed by the employer.

Penalties

Penalties for Knowingly Hire / Continuing to Employ Violations

Employers determined to have knowingly hire or continuing to employ violations shall be required to cease the unlawful activity and may be fined. The agent or auditor will divide the number of knowing hire

and continuing to employ violations by the number of employees for which a Form I-9 should have been prepared to obtain a violation percentage. This percentage provides a base fine amount depending on whether this is a First Tier (1st time violator), Second Tier (2nd time violator), or Third Tier (3rd or subsequent time violator) case. The standard fine amount listed in the table relates to *each* knowing hire and continuing to employ violation. The range of the three tiers of penalty amounts are as follows:

Knowing Hire / Continuing to Employ Fine Schedule
(Effective for penalties assessed after January 27, 2017 whose associated violations occurred after November 2, 2015)

	Standard Fine Amount		
Knowing Hire and Continuing to Employ Violations	First Tier $548 - $4,384	Second Tier $4,384 - $10,957	Third Tier $6,575 - $21,916
0% – 9%	**$548**	**$4,384**	**$6,575**
10% – 19%	**$1,140**	**$6,322**	**$8,547**
20% – 29%	**$1,754**	**$7,232**	**$11,177**
30% – 39%	**$2,411**	**$8,174**	**$13,807**
40% – 49%	**$3,069**	**$9,094**	**$16,568**
50% or more	**$3,726**	**$10,026**	**$19,242**

Since the passage of IRCA in 1986, federal civil monetary penalties have been increased on two occasions in 1999 and 2008 pursuant to the Federal Civil Penalties Inflation Act of 1990, as amended by the Debt Collection Improvement Act of 1996. These adjustments are designed to account for inflation in the calculation of civil monetary penalties and are determined by a non-discretionary, statutory formula. (See 73 FR 10130 (February 26, 2008)

Penalties for Substantive and Uncorrected Technical Violations

The agent or auditor will divide the number of violations by the number of employees for which a Form I-9 should have been prepared to obtain a violation percentage. This percentage provides a base fine amount depending on whether this is a first offense, second offense, or a third or more offense. The standard fine amount listed in the table relates to *each* Form I-9 with violations. The range of the three tiers penalty amounts are as follows:

Substantive / Uncorrected Technical Violation Fine Schedule
(Effective for penalties assessed after January 27, 2017 whose associated violations occurred after November 2, 2015)

	Standard Fine Amount		
Substantive Verification Violations	1st Offense $220 - $2,191	2nd Offense $220 - $2,191	3rd Offense + $220 - $2,191
0% – 9%	**$220**	**$1,096**	**$2,191**
10% – 19%	**$548**	**$1,315**	**$2,191**
20% – 29%	**$876**	**$1,534**	**$2,191**
30% – 39%	**$1,205**	**$1,753**	**$2,191**
40% – 49%	**$1,534**	**$1,972**	**$2,191**
50% or more	**$1,862**	**$2,191**	**$2,191**

Enhancement Matrix

The following matrix will be used to enhance or mitigate the recommended fine contained on the Notice of Intent to Fine. (*Id.*)

Enhancement Matrix

Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Aliens	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%

Last Reviewed/Updated: 01/08/2018