

Self-Audit – Getting Started

- Generate a list of all current employees.
- Include name, date of hire, and distinguishing fact (SSN or DOB).
- Pull I-9 forms for all current employees.
- Make sure that you have an I-9 form for each employee on the list.
- Make a note on the list if an I-9 form is missing for a particular employee.



Retention Requirements

- Once employee terminated, you must retain I-9 form for:
 - At least three years from date of hire; and
 - At least one year from date of termination;
 - Whichever is later.
- Once retention requirements met, purge/shred form.

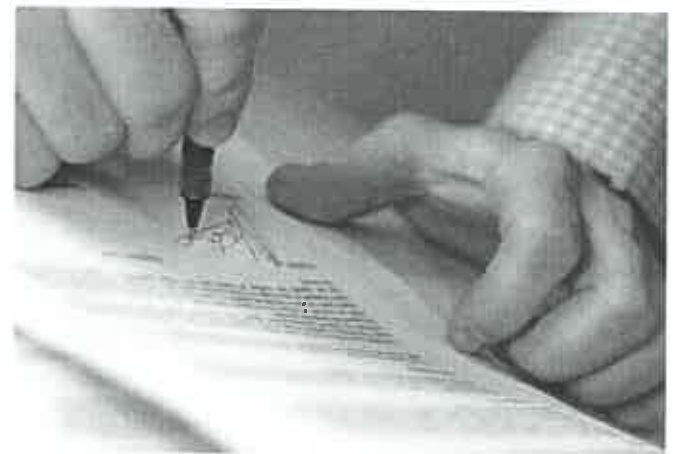


Section 1 – Common Errors

- Employee completed Section 1 after commencing work – Not Correctable.
- Employee did not check box regarding authorization to work in the U.S. – Correctable.
- Missing Social Security number - Not required (unless using E-Verify at time of hire).
- Employee failed to check or fully complete Citizenship Status Box - Correctable.
- Employee did not sign/date – Correctable w/ current date.

Section 2 – Common Errors

- No Start Date Listed in Certification Box - Correctable.
- Issuing Authority, Document Number, and/or Expiration Date missing for identity and work authorization document(s) - Correctable.
- Too many or too few documents listed - Correctable.
- Employer signature box incomplete – Correctable.



Making Corrections

- Correct errors, as allowed, on each form.
- Section 1 – Employee makes corrections.
- Section 2 – Employer makes corrections.
- Strike through errors – do not use White Out or Liquid Paper.
- All corrections should be initialed, dated, and include the words “Per Self Audit”.



Missing Form I-9

- If you determine that an I-9 form is missing for a current employee – complete a form immediately.
- Ask employee to complete Section 1, sign and date (with current date).
- Complete Section 2 (insert original start date) and sign and date (with current date).



Missing I-9 – Terminated Employee

Fisher
Phillips

- If you discover that you are missing an I-9 form for a terminated employee, you may contact terminated employee and complete I-9 form now.
- Good practice to review I-9 form at termination/exit interview.



Immigration Enforcement 2015

Fisher
Phillips

- ICE made 452 criminal arrests tied to worksite enforcement investigations -179 were owners, managers, supervisors or human resources employees.
- Charges include harboring or knowingly hiring illegal aliens.
- Employees arrested for aggravated identity theft and Social Security fraud.



Record-Breaking Immigration - 2015

Fisher
Phillips

- 3,127 Notices of Inspection and 637 Final Orders, totaling \$15,808,365.00 in administrative fines.
- ICE debarred 277 business and individuals for administrative and criminal violations.
- ICE believes utilizing enforcement, compliance and outreach is an effective approach to deter illegal employment and create a culture of compliance.
- HSI prioritizes investigations involving critical infrastructure and key resources. No industry, regardless of size, type or location is exempt from complying with the law or being the subject of an ICE investigation.

Largest Immigration Fine in History

Fisher
Phillips

- \$34 Million Dollar Fine – Texas software company fined for, among other immigration violations:
 - Failing to maintain I-9 records for many of its foreign nationals; and
 - Widespread failure to update and re-verify the employment authorization status of a large percentage of its foreign national employees.



Protect Your Business

Fisher
Phillips

- I-9 audit may be foundation for raid, civil money penalties and criminal sanctions.
- Ensure I-9 compliance programs are in place, up-to-date, and followed.
- Conduct regular internal I-9 audits and remedy identified errors.
- Have outside counsel conduct periodic I-9 audits.



ICE Arrives - Notice of Inspection

Fisher
Phillips

- Three days notice prior to ICE review of I-9 Forms allowed (may waive but not recommended).
- Original, microfilm, microfiche or electronic I-9 forms acceptable for inspection.
- Personal appearance to give testimony and turn over documents may be required.
- Subpoena/warrant not required for I-9 inspection.



What May Be Inspected?

- I-9 Forms for current employees hired after Nov. 6, 1986.
- I-9 Forms for terminated employees within the required retention period.
- Electronic employee listing.
- Quarterly wage and hour reports.
- Payroll data.
- SSA Mismatch correspondence.
- E-Verify and/or SSNVS documents.
- Business information (Employer ID number, owner's SSN/address, business licenses, etc.)

After ICE Inspection

- ICE issues Notice of Inspection Results if found in compliance.
- If not in compliance, may receive:
 - Notice of Technical or Procedural Failures
 - Notice of Suspect Documents
 - Notice of Discrepancies
 - Warning Notice
 - Notice of Intent to Fine
- Notice of Intent to Fine – employer has opportunity to negotiate settlement or request hearing.

IRCA Prohibited Acts

- **CANNOT:**
 - Knowingly hire an alien who is not authorized to work.
 - Hire any individual without verifying identity and work authorization.
 - Continue employing person if you know **or should know** person is not authorized to work.



Unfair Documentary Practices

- Do not require specific documents or combination of documents.
- Do not require more or different documents than minimally required.
- Do not refuse to accept documents that reasonably appear to be genuine.
- Employee's choice which of the acceptable Form I-9 documents to present.



Monetary Penalties

- I-9 substantive/uncorrected technical violations (e.g., missing I-9) range from \$216 to \$2,156 per violation.
- Knowing hire/continuing to employ violations range from:
 - \$539-\$4,313 (1st violation)
 - \$4,313-\$10,781 (2nd violation)
 - \$6,469-\$21,563 (Subsequent violation)



Determining Penalty Amounts

- Factors considered for enhancement of fine or mitigation:
 - Good faith effort to comply;
 - Seriousness of violation;
 - Whether the violation involved unauthorized workers;
 - Size of business; and
 - History of previous violations.
- Violation percentage calculated to determine amount of fine for first, second, subsequent violations.



Criminal Penalties

- 10 years and/or \$250,000 fine for harboring, smuggling, concealing, or transporting illegal aliens for financial gain.
- Criminal sanctions for conspiracy to harbor, smuggle, conceal, or transport.



E-Verify Top Ten Continued

Fisher
Phillips

- Close your E-Verify cases once you receive a final result.
- Maintain copies of E-Verify case results with employee's I-9 form.
- Display the required posters in English & Spanish.
- Photo Match – must keep copies of List A documents.
- USCIS Monitoring and Compliance Unit – if they contact you for a compliance audit, contact us!



Predictions for Immigration Under New Administration

Fisher
Phillips

- Mandatory E-Verify nationwide.
- Tightening up/securing the border.
- Increased enforcement actions with focus on employers (e.g., I-9 audits, inspections, and raids).
- Increased deportations.
- Cancellation of DACA.
- Changes in the H-1B Professional Worker Category.





Fisher
Phillips

THANK YOU
FOR THIS OPPORTUNITY