# PUBLICATION

## Is the Health Care Industry Ready for I-9 Audits? What You Need to Know About Compliance

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**The health care industry accounts for the largest segment of the U.S. labor market and, as such, is positioned for heightened scrutiny from federal agencies tasked with regulating and enforcing rules on employment. That includes the Immigration and Customs Enforcement agency (ICE), which has indicated it will be stepping up the number of I-9 audits targeting U.S. employers.**

Late last year, Tom Homan, ICE's Acting Director, announced that he has instructed his agency to dramatically increase the number of I-9 audits. According to news reports, Director Homan indicated that the scope of the investigations would be to find employers who fail to properly comply with the I-9 Employment Eligibility Verification requirements, thereby enabling undocumented workers, and also to arrest workers found to be undocumented as a result of the investigations.

Since then, ICE has focused on creating a "culture of compliance" by relying on I-9 inspections to find and fine employers who have not properly completed employment eligibility verifications. The number of businesses subjected to I-9 audits has soared over the last few years from hundreds to thousands per year, and ICE continues to issue audit notices. Monetary penalties for knowingly hiring 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 include failing to produce a Form I-9, range from $110 to $1,100 per violation.

Of particular concern in the health care industry is the need to have onboard casual, part-time, per diem, or remote employees. Given growing I-9 concerns and the need to focus on compliance, it is absolutely necessary that employers in the health care industry are aware of their obligations for proper I-9 procedures and develop cost-effective and compliant solutions for completing and storing I-9s.

Considering ICE's renewed attention to holding employers accountable, health care HR professionals involved in hiring and employment verification should ensure that they are ready for a worksite audit. Readiness not only requires a solid and in-depth understanding of the complicated maze of compliance requirements, but also the proper steps and procedures for conducting an internal audit of existing I-9s to determine accuracy. Taking proactive steps now to ensure that your company has a compliant I-9 program is the best way to minimize any potential fines or penalties that may be levied by ICE.

### Best Practices for I-9 Compliance

- Designate a trained HR leader to centralize the I-9 process and be responsible for creating internal processes and procedures for I-9 completion, retention, and storage.
- Conduct internal training to ensure that employees responsible for this function are well informed and understand anti-discrimination protocols. Do the individuals responsible for I-9 verification know the federal guidelines surrounding the I-9 process and have substantial knowledge of the M-274 I-9 Manual?
- Implement a system for tracking certain immigration statuses and ensuring timely re-verification of such statuses. Manually tracking expirations and reminding workers to provide updated documents in a timely fashion can be cumbersome and labor intensive. There is plenty of room for human error on

the employer side, which may allow an employee to become unverified and place the company out of compliance.

- Be sure to verify remote employees properly and timely. Remote employees still must complete Section 1 of the Form I-9 and have their identity and/or work authorization documents reviewed in person by a trusted agent or representative. Photocopying of documents and sending them to an employer is not permitted. Employers should provide new hires with clear instructions on how to complete the I-9 process if they are remote workers and should establish a review process for all remotely completed I-9s.

- Employers should plan on conducting a routine self-audit at least once per year to help ensure ongoing compliance with the employment verification, I-9, and E-Verify rules. Special guidance and rules exist for correcting errors and/or omissions on various sections of the Form I-9, as well as how the employer should properly handle lost, incomplete or outdated I-9s. HR should also set protocols for requesting additional documents from existing employees, and employers should provide employees with a reasonable amount of time to address any deficiencies associated with their Forms I-9. The reasonableness of the timeframe should be determined on a case-by-case basis, taking into consideration the specific nature of the deficiency and the time required to present alternative documentation.

## Key Takeaways

It is never too late to be audit ready. Health care employers should be proactively taking steps to ensure I-9 compliance and preparing to conduct an internal I-9 audit if they have not done so within the last year. All employers should periodically conduct self-audits, with the help of outside counsel if necessary, to help minimize potential liability and to put themselves in a position to successfully handle an audit.