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## Services

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## ICE Reclassifies Common Form I-9 Errors as Substantive Violations: What Employers Need to Know

On March 16, 2026, U.S. Immigration and Customs Enforcement (“ICE”) quietly published an updated fact sheet titled [Form I-9 Inspection Under Immigration and Nationality Act § 274A](#), which significantly revises how it classifies common Form I-9 errors. Without any Federal Register notice or proposed rulemaking, the updated fact sheet effectively overrides key provisions of the 1997 Virtue Memorandum, the guidance that had governed I-9 enforcement for nearly three decades. The practical effect is that numerous common Form I-9 completion errors that were previously treated as correctable “technical or procedural” violations have been reclassified as “substantive” violations subject to immediate fines, dramatically increasing employer exposure during I-9 inspections.

This distinction matters because under federal regulations, employers receive at least 10 business days to correct technical or procedural Form I-9 violations identified during an audit. Substantive violations, by contrast, may be penalized immediately, with no opportunity to fix the error first.

### What Changed?

The updated fact sheet lists 28 categories of substantive violations of Form I-9 requirements. The following errors, previously treated as technical and correctable, are now classified as substantive violations subject to immediate fines:

- Missing employee date of birth in Section 1
- Missing USCIS/alien number in Section 1, when applicable
- Missing date next to employee signature in Section 1
- Missing expiration date in Section 1 when required
- Failure to date Section 1
- Incomplete or incorrect employee attestation in Section 1
- Use of a Spanish-language Form I-9 outside Puerto Rico
- Missing name or title of employer representative in Section 2
- Failure to record the first day of employment or the date in Section 2
- Incomplete List A, B or C document data in Section 2, even where document copies were retained
- Failure to date Section 2
- Incomplete preparer/translator information in Supplement A
- Failure to provide the date of rehire in Supplement B
- Failure to check the alternative procedure box or use of the remote verification procedure without active E-Verify enrollment
- Electronic I-9 system audit trail, e-signature or security documentation deficiencies

Only a narrow set of errors remain classified as technical violations that retain the 10 business-day cure window. These include failing to record the employee’s complete name at the top of page 2, failing to provide an address in Section 1, failing to provide the business address in Section 2, and failing to use the current version of Form I-9.

### Why This Matters Now

These changes come amid a sharp increase in worksite enforcement activity. On January 3, 2026, ICE announced a 120% increase in its workforce, adding more than 12,000 officers and agents through an unprecedented nationwide recruitment campaign. The rate of Notices of Inspection (“NOI”) in 2025 was reported to be substantially higher than in prior years, and ICE has levied significant penalties across the construction, staffing, hospitality, manufacturing and retail industries. Employers should expect a higher likelihood of audits and increased scrutiny across the board.

The financial consequences of these changes can be severe. Substantive violations carry per-form civil penalties currently ranging from \$288 to \$2,861 for each Form I-9. Because fines are assessed on a per-form basis, routine or repeated omissions can compound rapidly. As a practical example, an employer with 200 Forms I-9 containing errors previously flagged as technical could now face paperwork penalties of approximately \$57,600 to \$572,200 under the new framework. These figures do not include penalties for knowingly hiring or continuing to employ unauthorized workers, which carry substantially higher fines. For organizations managing hundreds or thousands of Forms I-9, the financial exposure can add up quickly, even where every employee is legally authorized to work.

Given this landscape, proactive internal remediation before any government contact is the most important step employers can take. Pre-inspection remediation stops the continuing nature of each violation and creates the strongest available evidence of good faith for penalty purposes. By contrast, correcting forms after receiving an NOI does not reduce liability for substantive violations.

Importantly, an employer that conducts an internal audit, identifies violations and then fails to fix them may be in a worse position than an employer that never audited at all—documentation of known but uncorrected deficiencies may be used as evidence of bad faith. For this reason, any internal audit should be undertaken with a commitment to remediation and under the supervision of qualified immigration counsel.

### Recommended Action Steps

In light of the March 2026 fact sheet, employers should consider taking the following steps as promptly as practicable:

- **Conduct an internal I-9 audit.** Even if an audit was conducted recently, errors previously flagged as technical and not remediated now may constitute substantive violations and should be re-examined.
- **Verify electronic I-9 systems for compliance.** Confirm that audit trails, electronic signature functions and security documentation satisfy applicable regulatory standards.
- **Retrain I-9 administrators.** Provide updated training on completeness requirements with attention to the fields now reclassified as substantive.
- **Standardize onboarding procedures.** Ensure that Form I-9 completion practices are consistent and compliant across all company locations.
- **Maintain documentation.** Have processes in place for maintaining clear documentation of all corrections and updates.
- **Develop a rapid-response protocol.** Establish designated response teams and procedures for handling unannounced ICE visits, including identifying who will interact with agents and where documents are stored.

If you have questions about the updated ICE Form I-9 enforcement guidance, internal I-9 audits, compliance strategies or any other immigration-related concerns, please contact Kutak Rock’s [National Immigration Team](#) or any member of the firm’s [National Employment Law Group](#). You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).

