



News & Types: Client Advisories

Form I-9 Enforcement Update: ICE's New Framework for Assessing Substantive Violations and Technical Errors

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Practices: Immigration

On March 16, 2026, U.S. Immigration and Customs Enforcement (ICE) updated its Form I-9 Inspection Fact Sheet. This update significantly expands the scope of errors classified as “substantive,” reclassifying many issues that were previously considered “technical” and correctable within a 10-day period following inspection by ICE’s Homeland Security Investigations (HSI).

Technical errors are generally understood as minor mistakes or omissions that do not undermine the integrity of the Form I-9 for purposes of identity and employment authorization verification. These errors have historically been correctable during an I-9 audit within a 10-business-day cure period. By contrast, substantive errors are deficiencies that call into question the validity of the Form I-9 or the underlying identity and work authorization verification process. Substantive violations are not curable for purposes of avoiding liability and may result in civil penalties. Even where corrected as part of a good-faith compliance effort prior to an ICE/HSI audit, such violations may still carry financial exposure under ICE’s updated framework.

ICE’s I-9 audits have been undergoing a recorded increase throughout the current Trump Administration, as reported by the Financial Times in July 2025: “US companies overwhelmed by Trump’s immigration audit paperwork.” By updating its Fact Sheet to include a list of 28 types of substantive violations, ICE is directly communicating its intention to create more liability on the part of an employer during an I-9 audit and to limit an employer’s ability to cure deficiencies during an audit. ICE has also formally added new technical errors to its Fact Sheet, including failure to record certain information on the Form I-9 and failure to use the correct version of the Form I-9 that was current at the time the Form I-9 was initially completed.

A major shift is ICE’s movement toward a stricter interpretation of INA § 274A(b), which requires employers to attest, under penalty of perjury, that they have examined the employee’s documentation. Historically, ICE and administrative case law occasionally permitted employers to rely on retained copies of List A or List B and C documents to support compliance, even where certain document details were not fully recorded on the Form I-9.

Under the updated guidance, the Form I-9 must stand on its own. All required document information must be fully and accurately recorded. A deficient Form I-9 is now a defective attestation, even where supporting document copies are retained. In practical terms, if information is not recorded on the Form I-9, ICE will treat that information as though it does not exist during an audit.

For employers, this signals an urgent need for more proactive compliance efforts. Internal I-9 audits should be conducted regularly, with particular attention to errors that are now classified as substantive. While correcting such issues prior to a Notice of Inspection (NOI) from ICE/HIS will not eliminate liability, it may help mitigate civil fines and criminal penalties.

At a minimum, internal audits should focus on identifying missing document numbers, absent issuing authorities, incomplete List A or List B and C entries, and failures to timely complete Sections 1 and 2. Given the heightened enforcement environment, employers are strongly encouraged to consult with immigration counsel to conduct comprehensive I-9 compliance reviews and implement corrective measures where necessary.

WHAT ARE THE ENUMERATED SUBSTANTIVE VIOLATIONS AND TECHNICAL ERRORS OUTLINED IN THE NEW ICE FACT SHEET?

SUBSTANTIVE I-9 PAPERWORK VIOLATIONS UNDER THE MARCH 16, 2026 ICE FORM I-9 FACT SHEET	
<i>General Form I-9 Substantive Violations</i>	
1	Failure to prepare the Form I-9
2	Failure to present the Form I-9 for inspection upon request (8 C.F.R. § 274a.2(b)(3))
3	Failure to ensure the timely preparation of Section 1 of the Form I-9 and/or failure to timely prepare Section 2 of the Form I-9 (and/or Supplement B of the Form I-9, if applicable)
4	Completion of a Spanish-language version of the Form I-9 outside of its authorized area. The Spanish-language version of the Form I-9 can only be officially completed and retained by employers and employees in Puerto Rico
5	Failure to meet the standards for the electronic completion, retention, documentation, security, reproduction, electronic signature(s) for the employee, and electronic signature(s) for the employer, recruiter, or referrer for a fee, or representative, as set forth in 8 C.F.R. § 274a.2(e), (f), (g), (h), and (i)
<i>Section 1, Form I-9 Substantive Violations</i>	
6	Failure to ensure that the employee completes his or her printed or typed legal name and date of birth
7	Failure to ensure that the employee checks only one box attesting to whether the employee is a citizen of the United States, a noncitizen national of the United States, a Lawful Permanent Resident, or an alien authorized to work until a specified date
8	Failure to ensure that the employee completes the Alien Registration Number/U.S. Citizenship and Immigration Services (USCIS) Number field next to the phrase “A lawful permanent resident (Alien #)”
9	Failure to ensure that the employee completes the Alien Registration Number/USCIS Number field or the

	Form I-94 Admission Number field or, if applicable, the foreign passport number and country of issuance and the employment authorization expiration date field required for aliens authorized to work in the United States until a specified date (Alien # or Admission #)
10	Failure to ensure that the employee signs the attestation portion of Section 1
11	Failure to ensure that the employee dates Section 1 of the Form I-9
Section 2, Form I-9 Substantive Violations	
12	Failure to Verify a proper List A document or proper List B and List C documents within three business days following the date of hire, by physically examining an original and acceptable List A document or proper and acceptable List B and List C documents described in 8 C.F.R. § 274a.2(b)(l)(v)(A), and determining that the document appears to be genuine on its face and reasonably related to the individual; or by physically examining original and acceptable documentation, as described in 8 C.F.R. § 274a.2(b)(l)(v)(B)-(C), and determining that the document appears to be genuine on its face and reasonably related to the individual
13	Failure to record the document title, issuing authority, document number(s), and/or expiration date(s) (if any) of an acceptable List A document or original and acceptable List B and List C documents described in 8 C.F.R. § 274a.2(b)(1)(v)(A)-(C)
14	Failure to record the document title, issuing authority, document number(s), and/or expiration date of the replacement document required to have been presented in accordance with 8 C.F.R. § 274a.2(b)(1)(vi)(A). Verify within the 90-day period described in 8 C.F.R. § 274a.2(b)(1)(vi)(A)(3) the replacement document, in the case of a document receipt issued in connection with an application to replace a lost, stolen, or damaged document, by physically examining the replacement document or any other valid List A or combination of List B and C documents presented by the employee in lieu of the replacement document. Determine that the document appears to be genuine on its face and reasonably related to the individual
15	Failure to mark the alternative procedure box in Section 2 if the employer used an alternative procedure authorized by DHS to examine documents
16	Failure to be an active E -Verify participant or registered in a DHS Non-E-Verify Remote Document Examination Form I-9 program when putting a check mark to notate that an alternative procedure was authorized by DHS to examine documents
17	Failure to print the complete name and title of the employer or authorized representative
18	Failure to provide the date of hire in the attestation portion of Section 2 of the Form I-9
19	Failure to sign the Certification portion of Section 2
20	Failure to date the Certification portion of Section 2
Supplement A (Preparer/Translator Certification), Form I-9 Substantive Violations	
21	Failure to ensure that the preparer and/or translator's complete name, address, signature, and date are provided on the Form I-9 at the time of completion, when either a preparer and/or translator was used to assist the employee in the completion of the form
Supplement B (Reverification/Rehire), Form I-9 Substantive Violations	

22	Failure to date Supplement B of the Form I-9 not later than the date on which an employee's temporary employment authorization expires, verify the individual's continued employment eligibility by physically examining an original and acceptable document described in 8 C.F.R. § 274a.2(b)(1)(v)(A) and determining that the document appears to be genuine on its face and reasonably related to the individual; or by physically examining an original document described in 8 C.F.R. § 274a.2(b)(1)(v)(C) and determining that the document appears to be genuine on its face and reasonably related to the individual
23	Failure to provide the date of rehire in Supplement B, or in an alternate applicable section or supplement pertaining to a required reverification or rehire entry, of the Form I-9
24	Failure to record the document title, document number(s), and/or expiration date(s) (if any) of an acceptable document described in 8 C.F.R. § 274a.2(b)(l)(v)(A) or (C)
25	Failure to record the document title, document number(s), and/or expiration date (if any) of the replacement document required to have been presented in accordance with 8 C.F.R. § 274a.2(b)(l)(vi)(A), and verify within the 90-day period described in 8 C.F.R. § 274a.2(b)(l)(vi)(A)(3) the replacement document in the case of a document receipt issued in connection with an application to replace a lost, stolen, or damaged document, by physically examining the replacement document or any other valid List A or List C document presented by the employee in lieu of the replacement document and determining that the document appears to be genuine on its face and reasonably related to the individual
26	Failure to print the complete name of the employer or authorized representative, sign and date the "Reverification and Rehires" portion of Supplement B, or an alternate applicable section or supplement pertaining to a required reverification or rehire entry, on or before the date the employee's previously presented temporary employment authorization expires
27	Failure to mark in the alternative procedure box in Supplement B if the employer used an alternative procedure authorized by DHS to examine documents
28	Failure to be an active E-Verify participant or registered in a DHS Non-E-Verify Remote Document Examination Form I-9 program when checking that it used an alternative procedure authorized by DHS to examine documents

Form I-9 Technical or Procedural Failures and Potential Violations under the March 16, 2026 ICE Form I-9 Fact Sheet

Section 1, Form I-9 Technical or Procedural Failures and Potential Violations

1	Failure to use a version of the Form I-9 that is current at the time any part of the form is initially completed
2	Failure to ensure that an individual provides his or her other last names used (if any) or a physical address in Section 1 of the Form I-9. A missing email address or phone number in Section 1 will not constitute a violation
3	Failure to, when enrolled and utilizing E-Verify for the employee, ensure that the employee's Social Security Number is correct

Section 2, Form I-9 Technical or Procedural Failures and Potential Violations

4	Failure to record the employee's complete name at the top of page 2
5	Failure to provide the business name, or physical business address in Section 2 of the Form I-9

Supplement A (Preparer/Translator Certification), Form I-9 Technical or Procedural Failures and Potential Violations	
6	Failure to record the employee's full name at the top of Supplement A
Supplement B (Reverification/Rehire), I-9 Technical or Procedural Failures and Potential Violations	
7	Failure to record the employee's full name at the top of Supplement B
8	Failure to record the employee's new name (if applicable) in the applicable section

HOW DOES ICE DETERMINE I-9 VIOLATION FINES DURING AN AUDIT?

Following an NOI and I-9 audit, the date upon which ICE serves a Notice of Intent to Fine (NIF) upon an employer is the date that determines civil penalties for an I-9 audit. To determine the base fine amount, ICE will divide the number of substantive violations + the number of uncorrected technical or procedural failures + cases of knowingly hiring or continuing to employ unauthorized work violations by the number of Forms I-9 that should have been presented for inspection. The percentage resulting from this calculation will determine the minimum and maximum base fine amounts, which may change based on whether an employer is a first time or repeat I-9 violation offender.

After the base fine is determined, ICE will then apply the five statutory factors: 1) size of the business; 2) good faith of the employer; 3) seriousness of the violations; 4) involvement of unauthorized aliens; and 5) history of previous violations. See 8 U.S.C. § 1324a(e)(5).

Civil penalties can range from \$275 to \$5,724 for first offenses for each unauthorized alien with respect to whom the offense occurred. See 8 C.F.R. § 274a.10(b)(ii)(A). The minimum statutory requirement for a second offense is \$2,200 for each unauthorized alien with respect to whom the offense occurred, and no less than \$3,300 for more than two offenses for each unauthorized alien with respect to whom the offense occurred. See 8 C.F.R. § 274a.10(b)(ii)(B-C).

CONCLUSION

In light of the Administration's significantly increased focus on I-9 compliance and the substantial penalties that may now be imposed due to what used to be considered minor technical errors, employers should regularly review their Forms I-9 and their electronic I-9 systems to ensure compliance with current program requirements.

Please contact Mr. Bob White, co-Chair of the MFEM Immigration Group, (rwhite@masudafunai.com) to schedule a proactive review of your company's Forms I-9 with one of the MFEM Immigration attorneys.

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