

# Electronic Alert

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## Employers Take Note: New Form I-9 Rollout

By Chris Morgan & Daniel Walker

On January 31, 2020, the U.S. Citizenship and Immigration Services (“USCIS”) announced a new version of the Form I-9 Employment Eligibility Verification. Employers should immediately incorporate the new Form I-9 into their business processes. Failure to comply by April 30, 2020, may subject an employer to all applicable penalties, as enforced by U.S. Immigration and Customs Enforcement (ICE). There is no need to complete the new Form I-9 for current employees who already have a properly completed Form I-9 on file, unless reverification applies.

The new Form I-9 rollout comes on the heels of increased federal attention on workplace audits. In 2017, the acting director of ICE announced that the agency would drastically increase its number of worksite related investigations. True to form, ICE quintupled its number of Form I-9 worksite enforcement operations over the past two years. The surge is due in large part to increased funding for ICE’s Homeland Security Investigations (HSI) arm, which is slated to receive even more funding in recent budget proposals.

ICE has committed to increase its worksite audits in order to put businesses of all sizes on notice of HSI’s worksite enforcement efforts. In addition to beefing up its compliance and audit staff, the agency is actively exploring ways to automate large scale Form I-9 audits to address backlogs and expand its audit capabilities. According to DHS budget documents, a test pilot of these automation tools will be rolled out in mid-2020. It may no longer be a question of “if,” but rather “when” an employer will be subject to a Notice of Inspection (NOI) for Forms I-9 compliance.

While the changes to the Form I-9 are minimal, an employer's failure to ensure proper completion and retention of the new Form I-9 may lead to civil money penalties, and, in some cases, criminal penalties. These penalties, which can range from \$220 to \$2,191 per violation, are assessed equally for substantive *and* technical violations. ICE demands strict compliance in this area. There is no relief for “close enough.”

The best way to ensure Form I-9 compliance is to take proactive steps. This includes internal audits of existing Forms I-9 and proper training to confirm Forms I-9 are filled out completely and correctly upon hire. We encourage employers to reach out to counsel proactively to conduct internal Forms I-9 audits or to provide trainings to ensure compliance with the applicable laws and regulations, as well as to clarify any remaining questions as to best practices in the event of ICE action.

*For questions related to Form I-9 compliance, contact Chris Morgan or Daniel Walker at 503-228-0500, or at [cmorgan@barran.com](mailto:cmorgan@barran.com) or [dwalker@barran.com](mailto:dwalker@barran.com).*