Action Plan for Employers to Avoid Business Disruption

INTRODUCTION

Recent **Immigration and Customs Enforcement ("ICE")** raids and audits have raised serious employment concerns in American industry.

Wage pressure, turnover rates and large percentages of immigrant and hourly workers increase an employers' risk for noncompliance. What can businesses do to hire qualified employees and ensure legal compliance? I-9 Accuform® has assembled an I-9 Action Plan for employment eligibility verification that employers need to implement to increase compliance and help avoid steep fines, penalties, negative publicity and business disruption.
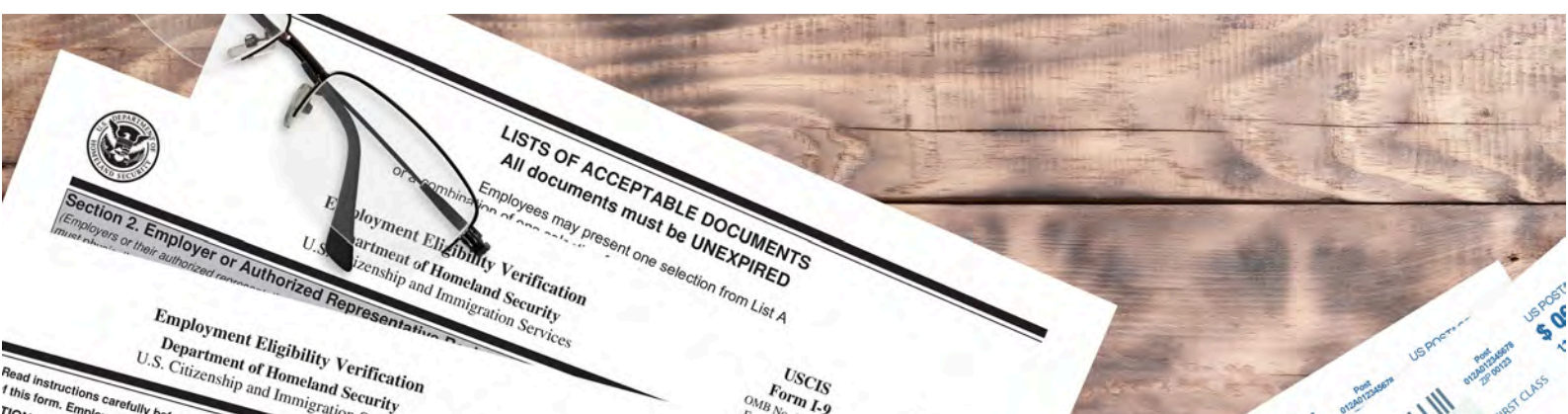
Employment Verification: Importance and Legal Obligations

Over the past three decades, federal enforcement of worker authorization has intensified, with state and local governments also increasing their scrutiny in recent years. This trend has led to confusion among employers regarding the importance and requirements of completing the Form I-9.

The Immigration Reform and Control Act (IRCA), enacted in 1986, requires U.S. employers to verify the employment eligibility of new hires and prohibits the recruitment or hiring of unauthorized workers. Noncompliance with IRCA can result in significant legal, financial, and reputational risks.

Employment Verification: Why It Matters

Increased government scrutiny has left many employers confused about the importance, process, and requirements of completing the Form I-9.

Several factors have contributed to heightened compliance concerns:

Economic Uncertainty: The COVID-19 pandemic has led to a stagnant U.S. economy and high unemployment rates.

Undocumented Workers: Government estimates suggest that there are +15 million undocumented immigrants in the U.S. This population is expected to grow under current policies.

Why should you care?

Failure to comply with employment verification laws can result in severe penalties, including fines, back pay, and even business closure. By understanding and following the proper procedures, you can protect your business from legal risks and maintain a compliant workforce.

Background of the Form I-9

In 1986, the Immigration Reform and Control Act (IRCA) was passed to reduce illegal immigration. This law required U.S. employers to verify the employment eligibility of all new hires. It also made it illegal for employers to knowingly hire or employ unauthorized workers.

IRCA had a significant impact on employers in two ways:

- **Increased Risk:** Non-compliance with IRCA could lead to legal, financial, and reputational damage.
- **Responsibility:** Employers were now responsible for understanding and enforcing immigration laws.

In essence, IRCA made employers accountable for ensuring a legal workforce. Failure to hire only authorized workers could result in penalties, fines, or even criminal prosecution.
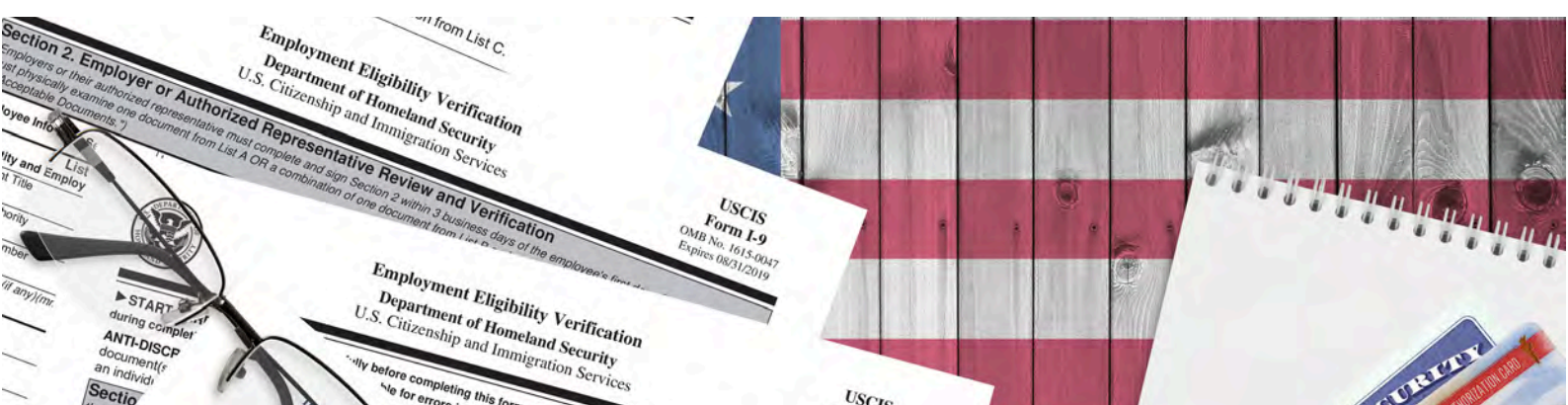
Shifting Focus to Employers

Starting in 2008, immigration reform efforts began targeting employers rather than individual immigrants. The Immigration and Customs Enforcement (ICE) agency significantly increased the number of workplace inspections and audits conducted to identify employers hiring unauthorized workers.

ICE Enforcement Results (October 1, 2017 - July 20, 2018)

- **Fines and Penalties:** Businesses were ordered to pay a total of $105.4 million in fines and penalties, including the largest-ever financial penalty in an immigration case.
- **Arrests:** ICE made 520 criminal arrests and 2,179 administrative arrests related to workplace enforcement.
- **Investigations:** ICE opened 7,809 workplace investigations and conducted 1,360 I-9 audits.
- **Debarments:** ICE debarred 376 businesses and individuals for violating immigration laws.

Recently, ICE has stated that it will audit over 90% of U.S. businesses for I-9 compliance in the coming ten years.

What Experts Say

ICE's Goal and Employer Responsibility

John Morton, the head of ICE, stated that the goal of audits is to establish a "culture of compliance" among employers. This means that verifying the employment eligibility of new hires should become as routine as paying taxes. ICE expects employers to terminate workers whose documents cannot be validated. However, employers who fail to do so may face legal consequences.

Employment verification is not optional; it is a legal requirement.

As Katie Martinka, an Irvine, CA-based attorney and I-9 compliance specialist, emphasized, "The I-9 is crucial. Every business must ensure that the people they hire are legally authorized to work in the United States. Failure to comply with I-9 requirements is a violation of the law."

To mitigate risks, ensure they are hiring authorized employees, and address ICE concerns, employers should:

- **Understand and follow I-9 requirements.**
- **Train employees on I-9 procedures.**
- **Keep accurate I-9 records.**
- **Conduct regular internal audits.**
- **Seek legal advice if needed.**

So, what can employers do to mitigate employment risks, ensure they are hiring authorized employees and eliminate ICE concerns?

The I-9 Accuform Action Plan for Employers

1. Designate an I-9 Coordinator:
- Assign a dedicated HR professional to oversee the employment verification process.
- Ensure this individual is responsible for leading the process, implementing internal policies, and communicating with employees and relevant authorities.
- The complexity of I-9 paperwork, strict deadlines, frequent regulatory changes, and employee turnover require ongoing attention to maintain compliance.

The Form I-9 has become a significant source of headaches and fines for many employers. ICE audits often result in substantial penalties due to common I-9 errors, which can range from 20 to 80 percent. These errors can lead to fines of up to $110,000, along with the hidden costs of business disruption and negative publicity.

The most common I-9 issues include:
- Data inconsistencies
- Incomplete documents
- Lack of employer familiarity with identification documents
- Failure to comply with document retention requirements

Other Common Issues:
- **Defining an Employee:** Do part-time workers, interns, and temporary employees need to complete I-9 forms? What about contractors?
- **Process Consistency:** Are managers required to retain copies of all employees' documents?
- **Re-verification:** When is re-verification required? What documents are needed? Who is responsible for re-verification?

A Strong Defense: The Compliance Expert

One of the most effective ways to prevent I-9 non-compliance is to designate a dedicated individual, known as the Compliance Expert, who can provide guidance on I-9 requirements and address common questions.

2. Develop and Implement Compliance Resources

While a dedicated Compliance Expert is crucial for communication and oversight, a comprehensive set of written resources is essential for long-term compliance.

Here's what you should do:

- **Create a Clear Employment Verification Policy:** Establish a unified company policy outlining the I-9 verification process for all employees and business units. This policy should be easily accessible to everyone in the organization.
- **Develop Detailed Procedures:** The Compliance Expert should create a step-by-step guide that streamlines the I-9 verification process. This guide can explain document requirements, verification procedures, and best practices for managers involved in hiring.
- **Train a Core Team:** Train a group of additional company personnel to become I-9 specialists. This team can assist managers with the verification process and answer basic employee questions. An educated team of managers and HR professionals can significantly enhance your compliance efforts.

- **Publish Internal Training Materials:** Develop and implement internal training programs to educate employees and managers on I-9 requirements and procedures.
- **Utilize Government Resources:** Leverage government-sponsored resources like the U.S. Citizenship and Immigration Services website (http://www.uscis.gov/) and the online I-9 handbook.

By creating a clear and accessible set of resources, you can ensure everyone in your organization understands and follows proper I-9 procedures.
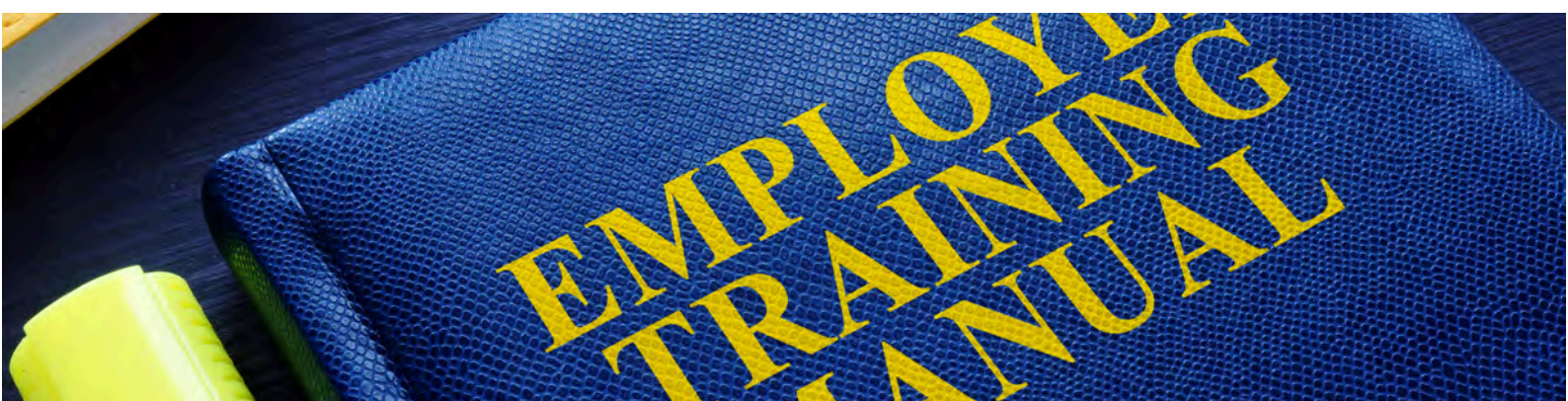
3. Securely Store I-9 Documents

- **Separate Storage:** Never store I-9 forms in employees' personal files. I-9s must be kept in a separate, secure location.
- **Retention Requirements:** Employment verification laws mandate strict document retention periods. Organize your I-9s based on these requirements, which typically range from three years after hire or one year after termination, whichever is later.
- **Government Property:** Signed I-9s are not your property; they are considered government property. Employers are responsible for retaining physical custody of these documents.
- **Legal Records:** I-9s are legal records that demonstrate compliance with federal law. They are not backup documents.
- **Track Expirations:** Failing to track I-9 expiration dates and conduct re-verifications can be used as evidence of a knowing violation of eligibility laws.
- **Timely Completion:** Employers must complete the I-9 within three business days of hire and re-verify work authorization documents on the expiration date. There are no grace periods for employees or employers who fail to comply with these requirements.

4. Conduct Regular I-9 Audits

Regular audits of I-9 files are essential for preventing non-compliance and avoiding the associated fines, reputational damage, and potential criminal prosecution.

The Immigration and Customs Enforcement (ICE) and the Department of Labor (DOL) enforce I-9 compliance laws. During an audit, employers can face significant fines for unlawful hiring and employment practices. These fines include:

- **Incomplete or Unavailable I-9s:** Fines range from $110 to $1,100 per violation.
- **Hiring or Employing Unauthorized Workers:** Civil penalties range from $250 to $11,000 per violation.
- **Pattern of Non-Compliance:** Fines can be as much as $3,000 per unauthorized employee hired.
- **Substantial Failure to Comply:** Fines may range from $1,000 to $35,000.
- **Back Pay:** The Department of Labor can order back pay to unauthorized workers.

By conducting regular audits, you can identify and correct potential I-9 issues before they lead to costly penalties.

5. Establish Reporting Procedures

- **Employee Tip Line:** Create a confidential mechanism for employees to report suspected activity related to the employment of unauthorized workers.
- **Employer Response Procedures:** Mandate procedures for employers to report credible employee tips and information, including suspected criminal misconduct, to ICE.
- **Internal Communication Guidelines:** Develop formal guidelines for internal communication in the event of an audit.

Government Agencies and Audits:

- **Inspection Authority:** The Department of Labor, the U.S. Department of Justice's Office of Special Counsel, and ICE have the authority to inspect an organization's I-9s without a warrant or subpoena.
- **ICE Investigations:** ICE is the largest investigative agency and conducts most I-9 audits. They can initiate investigations based on credible leads, sophisticated mathematical models, employer history, business industry, local demographics, referrals from other agencies, and workplace observations.

Navigating I-9 Compliance

The rules governing I-9 compliance can be complex and confusing, leading to uncertainty about document completion, re-verification, and retention requirements. However, substantial compliance and good faith efforts can be used as defenses against paperwork violations. By implementing the I-9 Action Plan, employers can significantly reduce their risk of monetary penalties.

An Optimal Solution: Automate the Process

Government agencies, compliance specialists, and HR professionals agree that automated I-9 software systems offer significant benefits:

- **Simplification:** Automated systems streamline the employment eligibility process.
- **Enhanced Compliance:** They help ensure higher levels of legal compliance.
- **Cost Reduction:** Automated systems can reduce fines, hiring costs, and turnover costs.

Automated systems incorporate hundreds of best practices to minimize the common errors associated with manual verification processes.

USCIS regulations allow and even encourage the use of electronic employment eligibility verification. Employers can also use a combination of paper and electronic systems.

After designating a Compliance Expert, I-9 Accuform advises clients to consider switching to an electronic system. With paper I-9s, employers have over 40 opportunities to make mistakes. These mistakes can be costly, both in terms of fines and other business expenses.

Benefits of an Automated Software System

An automated I-9 software system, like I-9 Accuform, can offer significant advantages to employers, including:

- **Time Savings:** Automate the I-9 process to save time and resources.
- **Cost Savings:** Reduce the risk of fines and penalties associated with non-compliance.
- **Reduced Disruption:** Minimize business disruption caused by audits and investigations.
- **Improved Reputation:** Protect your business's reputation by demonstrating compliance with I-9 regulations.

Automated Updates
I-9 Accuform is a cloud-based software-as-a-service (SaaS) solution. There's no software to download or install. I-9 Accuform automatically updates its software to reflect the latest legislation, requirements, and forms, ensuring that your business always has the most current information.

Creating Error-Free I-9s

I-9 Accuform's automated features help ensure that employers collect, enter, and retain all required information correctly.

These features include:

- **Form Field Validation:** Checks for accuracy and completeness in form fields.
- **Error Checking:** Validates document numbers, issuing institutions, states, years, and other specific details.

By automating these tasks, I-9 Accuform helps employers consistently and correctly complete the I-9 form, reducing the risk of paperwork fines. Electronic forms also eliminate legibility concerns.

Eligibility Verification with E-Verify

E-Verify is an online system that compares an employee's I-9 information to records from the Department of Homeland Security and the Social Security Administration to confirm employment eligibility. I-9 Accuform integrates with the government's E-Verify program.

It's important to note that E-Verify is a complementary tool to I-9 Accuform, not a replacement. While E-Verify can quickly verify employment eligibility, <u>it does not replace the requirement for employers to create compliant I-9s (in paper or electronic format) for their employees.</u>
Using E-Verify does not automatically make an employer compliant with IRCA law.

Official Designated

I-9 Accuform was certified as a Designated Agent of the Department of Homeland Security (DHS) in 2007.

This certification recognized the company's software, server, security practices, and adherence to DHS standards. In fact, the DHS used I-9 Accuform as a beta tester for their process changes. This allows I-9 Accuform to offer customized solutions tailored to specific customer needs, while competitors may only provide generic web-based services.

Secure Document Library

If you're using paper-based I-9 storage, your business is exposed to the risk of document loss. I-9 retention requirements often necessitate storing large amounts of paperwork for extended periods, which can be challenging for employers with high employee turnover. Electronic document storage provides a more secure solution that protects against lost, stolen, damaged, or tampered I-9s.

Deadline Tracking

The employment eligibility verification process is time-sensitive. Automated solutions can track important deadlines, benchmark dates, and alert employers about upcoming action items.

Software that tracks and records I-9 activity for each employee can strengthen an employer's good-faith defense in the event of an audit.

Comprehensive Coverage for All Workgroups

I-9 Accuform is more than just software. It offers a comprehensive service that confirms the right to work for three key groups:

- **Current Employees:** Existing employees who have already completed paper I-9s can have their documents converted to an electronic format, reducing the risk of errors and fines.
- **New Hires:** I-9 Accuform seamlessly integrates with E-Verify to confirm the eligibility of new hires.
- **Vendors and Subcontractors:** I-9 Accuform allows clients to verify the compliance of their vendors and subcontractors, which is often required for federal and state contracts.

Unlike other providers that focus solely on new hires, I-9 Accuform offers complete coverage for all three workgroups: current employees, new hires, and vendors/subcontractors. This comprehensive approach helps employers minimize their exposure to risks and ensure compliance with I-9 regulations.

It's important to note that any employer who fails to verify the right to work for all three of these workgroups is at risk of penalties and fines for non-compliance.

Table: I-9 Accuform vs. E-Verify vs. Paper-Based I-9s

Feature	I-9 Accuform	E-Verify	Paper-Based	Key Advantage
Create Compliant I-9	Yes	No	Yes	Ensures accurate and legal I-9 forms
Hosted	Cloud-based	Government-run	On-premises	No software installation required
Accessibility	Visible to your organization	Government access only	Visible to your organization	Easy access for authorized users
Instant Employment Verification	Yes	Yes	No	Immediate confirmation of eligibility
Instant Compliance	Yes	Yes	No	Reduces the risk of non-compliance
Admin Controls	You decide who has access	Government-controlled	You decide who has access	Greater flexibility in managing access
E-Signatures	Yes	No	No	Electronic signatures for both employee and employer
Editing an I-9	Anytime, from anywhere	Not applicable	Requires manual updates	Flexibility and efficiency

Table: I-9 Accuform vs. E-Verify vs. Paper-Based I-9s

Feature	I-9 Accuform	E-Verify	Paper-Based	Key Advantage
Viewing an I-9	At the push of a button	Not applicable	Requires physical access	Easy access to I-9 information
Sharing an I-9	At the push of a button	Not applicable	Requires physical transfer	Simplified sharing and collaboration
Printing an I-9	At the push of a button	Not applicable	Requires physical printing	Easy access to printed copies
Digital I-9 Storage	Yes	Not applicable	No	Secure and accessible storage of I-9s
E-Verify Subcontractors	Yes	Yes	No	Ensures compliance for subcontractors
Retention Limits	Tracks and retains using AI	Not applicable	Requires manual tracking	Automated retention management
Expiration Notices	Sends you email notifications	Not applicable	Requires manual tracking	Timely reminders for re-verification
Tentative Non-Confirmation	Provides instructions to help employees resolve issues	Yes	No	Support for employees facing TNCs
Updates	Ensures you are up-to-date with changing laws and regulations	Yes	Requires manual updates	Automatic compliance with evolving regulations
Audit Log	Tracks your every step	Not applicable	No	Provides a detailed audit trail
Reports	At the push of a button	Not applicable	Requires manual generation	Easy access to reports and analytics

Conclusion

Increased federal enforcement and a shift towards targeting employers have made employment verification compliance a critical HR concern.

Ensuring compliance is a complex, time-consuming, and ongoing task with significant legal, financial, and reputational risks. Following the I-9 Accuform Action Plan is a crucial first step towards improving processes and establishing a strong compliance foundation.

However, comprehensive compliance requires more extensive process development and controls. Automated solutions offer the simplest, fastest, and most efficient way to achieve peace of mind and mitigate risks.

I-9 Accuform's electronic, cloud-based compliance software helps U.S. employers mitigate risks and save costs through paperless, electronic I-9s that fully integrate with E-Verify.

Learn more about how I-9 Accuform can help keep your business safe by visiting i-9accuform.com or calling 415.929-1865.