Jessica L. Roe
Attorney

612-351-8305 (D)
612-810-1807 (C)
jroe@roelawgroup.com

60 South Sixth Street
Suite 2630
Minneapolis, MN 55402
612-351-8300 (O)
612-351-8301 (F)
www.roelawgroup.com

How to Survive an I-9 Audit or Engage in Your Own Audit

An I-9 audit is when federal immigration officials ask to review an employer's I-9 forms to make sure they are accurate, complete, and that all its employees have the proper work authorization. An audit may be triggered for various reasons, including random samples or reporting by ex-employees. Certain business sectors are more susceptible to I-9 audits, such as production or restaurants. The audit can be conducted by either Immigration and Customs Enforcement (ICE) or Homeland Security Investigations (HSI).

While officials don't need a warrant to conduct just an I-9 audit, they will likely issue a Notice of Inspection at least three days prior to the audit. Recently we have heard of ICE and DOL walking into employer sites and asking about employees and location of I-9, even without a warrant or Notice of Inspection. If you receive a Notice of Inspection, you will have three (3) days to get your I-9s if they are kept off site. In addition to production of your I-9s, the Notice of Inspection may also demand production of the following documents and information:

- Photocopies taken of documents presented in order to complete the I-9;
- Payroll information, including the name, social security number, wages, and hours worked by employees within a timeframe specified in the Notice of Inspection;
- Copies of the employer's quarterly tax statements;
- List of federal contracts held by the employer;
- A list of the employer's owner(s), shareholders, and executives;
- A copy of the employer's Articles of Incorporation;
- A list of parent companies and/or subsidiaries of the employer
- The employer's Tax Identification number; and/or
- A list of subcontractors or temporary employment agencies used by the employer.

The I-9 Audit Checklist

If you have been informed that officials will be conducting an I-9 audit, to be fully prepared, you will need the following:

- A list of all current employees;
- A list of employees terminated in the last three years;
- Copies of all I-9 forms (electronic or physical) for current employees and those that were terminated within three years;
- Current version of form I-9; and
- An audit log.

How to Conduct an I-9 Audit

1. Collect All Forms I-9.

You need to ensure that there is an I-9 on file **for each and every employee** currently working for you in the U.S. You should also have a list of current employees that do not have a form I-9.

If you have any I-9s for non-employees that do work for your organization (for instance, volunteers or consultants), you should remove them from your file.

We suggest you first look at current employees that have no form I-9, as this poses the greatest risk. The next priority is to review current employees' I-9s to make sure they have been completed thoroughly and properly. Finally, you should review the terminated employees' I-9s.

- If you are missing an I-9 for an employee, simply have them complete a new one and use the current date.
- Ensure this occurs quickly.
- Put them on the audit list but indicate that the matter has been corrected.
- If they fail to provide the necessary documentation within the given time frame, the employee should be terminated or put on a leave of absence. They may be able to work for you again once proof of eligibility to work in the U.S. has been provided.

2. Fix Current Employee I-9s.

USCIS has various resources to help you complete this process properly and be in compliance. Keep these on hand as you go through the I-9s. As explained here, employers can only correct technical errors in Sections 2 and 3; errors in Section 1 must be fixed by the employee.

- Make an audit log to track the list of mistakes
- Make corrections directly on the original I-9: use different colored ink to draw a line through the incorrect information and initial and date the changes to make sure it's obvious.
- Major errors, such as entire sections left blank or based on unacceptable documents, may require a new Form I-9 to be completed. Ask legal counsel here.

3. Organize and Correct Terminated Employee I-9s.

You should first determine the retention period:

- As long as an employee currently works for you, you must have the I-9 on file. This applies even if the employment ended shortly after hiring.
- After an employee stops working for your organization you must retain the I-9 as follows:

- Three years after the date of hire; or
- One year after the date of employment ends—whichever is later.

For example, if they worked for less than two years, you must retain their form for three years after the date you entered in the "First Day of Employment" field. If they worked for more than two years, retain the form for one year after the date they stopped working for you. After these respective periods, it's important that employers purge an employee's I-9, according to the form's retention requirements.

4. Document Steps and Amendments in the Audit Log.

As you go through and correct the I-9s and add in missing ones, organize them and document all of your steps. Keep the audit documentation with the I-9s or in a separate secure file.

These are fast-moving times, and the information provided is only current as of today's date (March 17, 2025). The information provided does not, and is not intended to, constitute legal advice; instead, all information is prepared and provided for general informational purposes only.
Copyright © 2025 Roe Law Group, PLLC, All rights reserved.