

Global Immigration alert

April 2026

United States

ICE updates Form I-9 inspections guidance

Executive summary

US Immigration and Customs Enforcement (ICE) recently issued updated guidance on its Form I-9, Employment Eligibility Verification, inspection and enforcement framework. The updated guidance appears intended to supersede or update certain aspects of prior Form I-9 enforcement guidance and reflects ICE's current articulation of inspection outcomes. While the guidance does not change the underlying statutory and regulatory requirements, ICE is signaling how it will classify paperwork errors during inspections.

Notably, the updated guidance describes a narrower set of paperwork issues as eligible for treatment as "technical or procedural", and indicates that other issues should be treated as "substantive", which may expose employers to civil money penalties.

Background and analysis

US employers are required to verify the identity and employment authorization of all employees in the United States by completing Form I-9. Employers must:

- Timely and properly complete Form I-9;
- Retain Forms I-9 for the required period of one (1) or three (3) years; and
- Produce Forms I-9 and supporting documentation upon service of a Notice of Inspection, typically within three business days.

A good-faith exception may allow an employer who has committed only *technical or procedural* violations to avoid civil penalties if they correct those violations within ten (10)

business days of written notice from the government. This exception does not apply to *substantive* violations. The updated guidance released by ICE outlines a newly-narrowed scope of errors eligible for correction under the good-faith exception.

Specifically, ICE identifies several common paperwork issues that it now characterizes as substantive violations. This may reduce the range of issues ICE will treat as correctable "technical or procedural" violations after written notice. Depending on ICE's position in a given inspection and the specific facts, certain errors in the completion of Form I-9 may therefore present increased civil money penalty risk.

Per ICE's latest guidance, examples of errors that ICE describes as substantive violations include, but are not limited to:

- Missing date of birth (Section 1)
- Missing the USCIS/alien number (Section 1)
- Missing the date next to the employee signature (Section 1)
- Missing the employment authorization expiration date (Section 1)
- Incomplete List A, B, or C data, even where document copies were retained (Section 2)
- Incomplete preparer/translator data in Supplement A
- Completing/using the Spanish-language Form I-9 outside of Puerto Rico

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Errors identified in ICE's guidance as technical errors that may be eligible for the 10-day cure window include, but are not limited to:

- Failing to record the employee's complete name at the top of page 2, Supplement A, or Supplement B
- Failing to record an employee's new name during reverification (Supplement B)
- Failing to ensure the employee provides other last names used, if any
- Failing to use the version of Form I-9 current at the time of initial completion

Notably, ICE's updated guidance indicates that retaining document copies does not convert missing Section 2 List A, B, or C data to a technical error for cure purposes. Previously, an employer who failed to record a document title, number, or expiration date in Section 2, but had retained a legible copy of the relevant document, may have taken the position that the omission was technical and could be corrected by transcribing the missing data onto the form within ten days of notice. Under ICE's current guidance, missing or incorrect List A, B, or C data in Section 2 is described as a substantive violation for which ICE may seek penalties regardless of whether copies were retained.

Further, the revised guidance states that Form I-9 paperwork violations may be treated as "continuing violations" until affirmatively corrected. Employers should be mindful that, to the extent ICE applies a continuing-violation theory in a given matter, it may affect how ICE frames timing and penalty exposure. This underscores the importance of conducting internal audits with a clear remediation strategy and appropriately documenting any corrections made in accordance with Form I-9 rules.

What this means

ICE's revised enforcement framework signals a review of Form I-9 paperwork compliance and reduced threshold for certain clerical or administrative errors. In light of these updates, employers should consider proactive internal review and correction, in addition to the following:

- Conduct targeted audits focusing on errors now characterized as substantive violations, and doing so with a clear remediation approach
- Train staff responsible for Form I-9 completion on the narrowed correction standards
- Review electronic and remote I-9 practices to ensure compliance with DHS requirements
- Avoid relying on document retention as a substitute for proper form completion

Given ICE's updated guidance and the current immigration enforcement environment, employers should not assume that issues identified during an inspection will be treated as correctable. Proactively auditing one's I-9 verification processes and correcting Form I-9s as appropriate may reduce penalty exposure.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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EY Law LLP

Batia Stein, Partner
+1 416 943 3593
batia.j.stein@ca.ey.com

Marwah Serag, Partner
+1 416 943 2944
marwah.serag@ca.ey.com

Melanie Bradshaw, Partner
+1 416 943 5411
melanie.bradshaw@ca.ey.com

Mehlman Jacobs LLP
Sharon Mehlman, Partner
+1 858 404 9350
sharon.mehlman@mehlmanjacobs.com

Dilnaz A. Saleem, Partner
+1 713 750 1068
dilnaz.saleem@mehlmanjacobs.com

Author: Christina Yoon
+1 604 891 8270
christina.yoon@ca.ey.com

Roxanne Israel, Partner
+1 403 206 5086
roxanne.n.israel@ca.ey.com

Sheila Snyder, Partner
+1 604 899 3515
sheila.snyder@ca.ey.com

Stephanie Lipstein, Partner
+1 514 879 2725
stephanie.lipstein@ca.ey.com