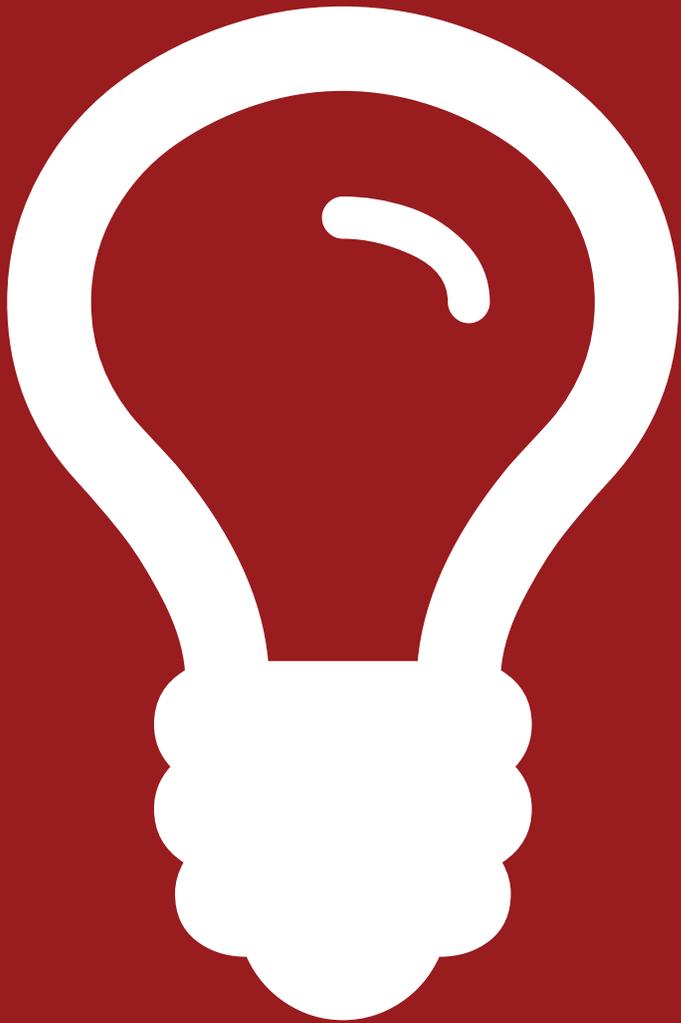


THE I-9 AUDIT:

**HOW AND WHY
TO PROACTIVELY
PLAN FOR AN
I-9 COMPLIANCE
AUDIT**



The 1-9 Audit

Part 1: What is an 1-9 Audit?

Part 2: Why Do You Need an 1-9 Audit?

Part 3: How to Plan for an 1-9 Audit

Part 4: What to Expect of the 1-9 Process



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Part 1:

What is an I-9 Audit?

To put it simply, an I-9 audit is designed to verify employment eligibility and ensure employers are following legal hiring practices. Because of this, it is good practice to undergo regular I-9 compliance audits. These audits are especially important because they not only help employers remain in I-9 compliance, but also help prepare for I-9 audits carried out by the U.S. Department of Homeland Security's Immigration Customs and Enforcement (ICE).

Background

In 1986, the Immigration Reform and Control Act (IRCA) was passed, requiring all U.S. employers to complete an I-9 form when bringing on a new hire. According to the U.S. Citizenship and Immigration Services (USCIS), the I-9 form serves to verify “identity and employment authorization of individuals hired for employment in the United States.”

This guide is designed to help employers understand the need for regular I-9 compliance audits and will help prepare employers for a smoother and simpler audit process.

Part 2:

When hiring a new employee, it is in the best interest of any employer to accurately complete Form I-9.

Why Do You Need an I-9 Audit?

While I-9 compliance may be simple, it is full of hurdles that can cause serious issues for employers. Failure to be in compliance is breaking the law and can cause severe fines and penalties. ICE will administer inspections to audit I-9 compliance and ensure no one is being employed illegally. ICE will provide a Notice of Inspection (NOI) and will want I-9 documentation within three business days. If your company is subject to an I-9 compliance inspection, it is imperative to ensure all I-9 forms are in order and accurately filled out.

Common Mistakes in Section 1 of Form I-9:

Due to the importance of I-9 compliance, it is recommended that employers conduct their own I-9 audit bi-annually. At FordMurray, we utilize our years of experience to help clients avoid any I-9 compliance issues and provide our clients with internal audit strategies.

Even simple record keeping mistakes and omissions can result in huge fines and issues. Confusion can lead to common mistakes in each of the three I-9 sections. With the help of the FordMurray team, these mistakes can easily be avoided:

- **Has the employee signed all required sections of Form I-9?** If there is no signature, the attestation is not complete.
- **Are you doing too much?** An employer's role in filling out the I-9 is to review the document for completeness. It is imperative not to ask for specific documents to verify the accuracy of information provided in section 1, or the employer can be accused of discrimination.
- **I's dotted, T's crossed, Boxes filled out?** -Don't forget about the last two certification boxes:
 - Number on individual's green card
 - Number on EAD or I-94 and the expiration date of work permission
- **Missing deadlines:** Section 1 of Form I-9 must be filled out on the new hire's first day of work.
- **IMPORTANT:** The employer assumes any liability for false statements in Section 1 if the employee fails to sign the I-9 and the employer accepts the Form without signature.

Common Mistakes in Section 2 of Form I-9:

- **Don't jump the gun:** Do not ask an employee to complete I-9 prior to offering employment. An employer may administer the I-9 on a new hire's first day of work or as soon as an offer of employment has been accepted.
- **Documentation issues:**
 - Employer forgets to enter acceptable List A or acceptable List B and C documents.
 - Employer does not verify if documents belong to List A, List B or List C.
 - Overdocumenting a section. Remember, if a List A document is provided, a List B or List C document is not required. If the employee does not provide an acceptable List A document, then a List B and List C document would be required. Never ask for a List A and a List B or C document, or else it can be considered overdocumenting.
 - Employer forgets to enter the document title, issuing authority, number(s) or expiration date.
- **Make sure all sections are completed:**
 - Employer forgets to enter business title, name or address.
 - Employer forgets to enter date employment began.
 - Employer forgets to sign, date and print name in certification.
- **Missing deadlines:** Employers must complete section by the 3rd business day of employment.
 - **IMPORTANT:** If an employee is hired for less than three days of work, section 3 must be completed on day 1.

Common Mistakes in Section 3 of Form 1-9:

- Filing errors: Employer does not maintain a tickler file system causing Section 3 to not be completed in a timely fashion.
- Limited work authorization document reminders: Employers fail to remind employees at least 120 days prior to when document expires. Failure to do so can cause reverication to not occur on the day of expiration.
- Employer reverifies a List B document or "Green Card."
- Employer forgets to enter document title, number or expiration date for an acceptable document presented.
- Employer forgets to enter a date of rehire, if applicable.
- Employer forgets to enter an employee's new name, if legally changed.
- Employer does not sign or date the certification.

Other Common Mistakes:

- **Are you using the most up-to-date I-9 form?** Using an expired form can lead to compliance issues, so it's best to not print out a large stack of forms at once. Visit [USCIS.gov](https://uscis.gov) to download the latest I-9 form.
- **Triple-check:** Employees and employers should take one more look at Form I-9 before filing. Review the entire form for clarity, legibility and completion.

I-9 non-compliance penalties can be severe and problematic. And there's a lot that can be missed! At FordMurray, we can help prevent any I-9 compliance problems with a thorough I-9 compliance audit.

Part 3:

How to Plan for an I-9 Audit

As an employer, you have worked hard to get your business off of the ground. With that being said, a lot can be put at stake by hiring employees illegally. Even before an ICE I-9 audit, obtain peace of mind by being proactive -- it is well worth it!

But how does one begin planning for an I-9 audit? The first step is organization. Employers should retain I-9 forms and store them in a location where they are easily and readily accessible. That way, if a form needs to be pulled, you as the employer knows exactly where to find it.

Also, ensure that all I-9 files are kept for the appropriate amount of time. Employers must maintain the I-9 of an employee for three 3 years after the date of hire or 1 year from the date of termination.

Most importantly, it never hurts to pre-prepare. An I-9 audit can be as smooth process if an employer can stay in compliance. Avoiding these basic compliance issues can help prepare employers for an I-9 compliance audit.

Compliance Issues:

- **Keep stellar I-9 records:** Create a clear and efficient system filing system for all I-9s. To avoid confusion, it is recommended that employers keep I-9 files in separate and secure folders. It is best to have one folder for current employees and one for past employees. It can be bad news if an employee's I-9 is missing when ICE comes to inspect.
- **Only accept valid documents and IDs:** An employer should be able to spot employment documentation issues.
 - Never accept expired documents.
 - Diligently check expiration dates.
 - Authentic documents only, no copies.
 - Have a way of keeping track of employee document expiration dates to ensure future compliance or prevent future compliance issues. The consequences of accepting bad documentation can be severe.
- **Handle citizenship verification gently:** As stated earlier, there is a fine line between asking to much and too little. Stick to what is required on the I-9 form. If suspicious, an employer should exercise judgement. But remember, ask too much and risk being cited for discrimination.
- **Timeliness and Accuracy:** Ensure forms being used are the proper and most up to date issued by U.S. Citizenship and Immigration Services (USCIS). Ensure Section 1 is completed on employee's first day of work and see to it that Section 2 is completed by the third day of work.

Staying organized and on top of I-9 compliance will make the I-9 audit process easier and simpler. We at FordMurray can help keep employers remain compliant and ready for I-9 audits.

Part 4:

What to Expect of the I-9 Audit Process

The I-9 compliance audit process can be tricky to navigate. FordMurray employs the expertise of experienced business immigration attorneys who are here to help employers remain in compliance.

During the audit process, employers can expect a thorough review of all documentation. This process will not only check for proper compliance, but ensure that all employees are hired legally, providing employers with peace of mind. Before the process begins, it is best to make sure that the roster of employees is up to date. Remember, all employees hired on or after November 6, 1986 must have an I-9 filled out.

During the audit process, I-9 forms will be matched up against the current roster of employees to check for any discrepancies. If an I-9 is not present for an employee, make best efforts to obtain one as soon as possible.

In an I-9 audit, accuracy is key. Sections 1 and 2 will be reviewed for accuracy. Section 3 will be reviewed for accuracy only if changes have been made, such as employment status, reverification and rehires. Employers should be prepared to provide any necessary corrections to ensure compliance.

Documentation will also be reviewed during the process. Last A or List B and List C documents will be checked for validity. It is extremely important to audit the process to provide authentic, valid documentation.

Thoroughness is the name of the game when it comes to the I-9 audit. The process is designed to be detailed to make sure employers are following legal hiring procedures. The team at FordMurray is prepared to help employers remain in compliance with its proven compliance audit procedures.

Checklist to Prepare:

Ready for an I-9 compliance audit? Review these items to ensure the process goes as smoothly as possible:

- Do you have an updated roster of employees?
- Do you have I-9 forms for current and former employees? Remember, documentation for former employees is only needed for one year after separation.
- Are all sections of each I-9 form properly filled out?
- Do you have valid I-9 documentation (List A or List B and List C) for current and former employees?
- Are all necessary signatures obtained?

Once all I-9 files have been organized and ready for audit, FordMurray's experts in compliance will help conduct a thorough I-9 audit to ensure you as the employer are following legal hiring practices.

Learn More:

Visit www.fordmurraylaw.com to learn more about Business Immigration solutions for employers and individuals, or contact Attorney Russell Ford at russell@fordmurraylaw.com