DirectEmployers Association

Webinar Q&A: I-9 & E-Verify Regulations Under the Trump Administration

1. **When there is an I-9 audit conducted by ICE do they typically audit all I-9s on file or a sample?**
   ICE can do either.

2. **In terms of the new changes from technical to substantive is there a date in specific this must be compliant. So is this triggered by the hire date or completion date or forms completed prior to these changes, are they grandfathered?**
   When USCIS decided to change those prior technical violations to substantive, there was no phase-in period or delay. The changes became immediately effective on March 16, 2026. Audits after that date will identify the changed violations as substantive and no longer technical.

3. **So what do you do if you find an error on a form for a former employee?**
   If you find an error in Section 2 of the Form, or the re-verification section (now called Supplement B), and you have information to enable you to make a correction properly, you may do that. In some cases, you may not be able to correct the mistake but could document the error and take steps to ensure it is not repeated. An employer may not correct an error found in Section 1 of the form. Because your question indicated that the error occurred on the form of a former employee, if the error occurred in Section 1, you would not be able to correct it. If you had to produce the form in an audit under your record retention obligations, you could be fined, unless there were sufficient mitigating circumstances that led the inspector to issue a warning, not an intent to fine.

4. **What is the risk of requesting documents from new hires to complete Section 2 prior to their start date for some employees, but not all? Could these inconsistencies cause risk in compliance?**
   To clarify, the employee completes Section 1 and the employer completes Section 2. Completing Section 2 before an employee's start date for some employees, but within the

standard three-day window for others, is generally not a compliance issue if forms are completed properly and within allowed timeframes (e.g., pre-merger onboarding). However, inconsistency can create risk if it results in different treatment of employees, particularly based on citizenship or national origin. Even if unintentional, varying practices could be perceived as discriminatory under DOJ IER guidance.

Timing differences alone are typically low risk, but inconsistent application without a clear, nondiscriminatory business reason can create avoidable compliance exposure.

We do have employees who are on work visas. Since we cannot ask them for documents related to their citizenship, how can the employer ensure that the employee's work authorization has not expired and that they are not continuing to work for the company unlawfully?
Employers cannot request specific documents based on citizenship, but they must track and reverify expiring work authorization.

If completed correctly, the Form I-9 will show the employee's authorization expiration date in Section 1, and for many visa holders, this date is typically reflected on the Form I-94 which is entered into Section 2 by the Employer Representative.

Employers should:

- Monitor expiration dates
- Reverify by that date using Supplement B
- Allow the employee to choose which valid document(s) to present

Importantly, the employee, not the employer, is responsible for determining which document(s) to present to demonstrate continued work authorization.

If valid authorization isn't provided, employment cannot continue.

5. **So what if we had an employee forget to put in the DOB in Section 1, but they also left employment already so we aren't able to have them correct it?**
It is difficult to correct errors in Section 1 when the employee has terminated employment, yet the employer still holds liability for such errors. Doing an internal audit periodically is advisable, so you can identify these types of errors before the employee has left the company. This scenario reinforces why employers should adhere to USCIS retention and storage guidance for Form I-9 records [USCIS Retention and Storage guidance] which states you may purge records of terminated employees three years after the date of hire, or one year after the date employment ends, whichever is later.

6. **If errors are corrected and memo'd via internal auditing, will this help in the event of an audit from ICE or another agency?**
   Yes, correcting errors properly and including a memorandum is evidence of good faith effort, and is one of five variables that USCIS can take into consideration to mitigate a fine.

7. **Is failing to note a name change in supplement B now considered a substantive violation? Do we have to update all I-9s or only those since the technical/substantive error categories changed?**
   No, failing to note a name change in supplement B is not a substantive violation. Capturing names changes in not required using Supplement B. The changes that USCIS made in re-classifying violations from technical to substantive does not mean that you have to update the Form I-9s if they were completed properly at the time of hire. If you conduct an internal audit and discover errors, you should try to fix them now, before being audited by ICE because ten of the technical violations that you used to be given 10 days to fix are now deemed substantive. You no longer have a grace period to fix them once you are in an ICE audit.

8. **You indicated that we cannot require employees to present specific documents, what about when we have an H-1B joining the company on their pending receipt notice?**
   You're correct that employers cannot require a specific document for Form I-9 completion. However, in the H-1B receipt scenario, you're not "requiring a document" in the traditional sense, rather you're applying regulatory requirements tied to work authorization type. Visit the USCIS M-274 H-1B Specialty Occupations for more guidance.

9. **Can you share where companies can provide their responses?**
   Note: I believe this was in regard to the Comments submitted to-date.

   https://www.regulations.gov/commenton/OMB-2026-0034-0001

10. **Please advise how to best support an employee who may have filled out their citizenship status inaccurately on section 1?**
    If an employee selects the wrong citizenship/immigration status in Section 1, the employee must correct it themselves, because employers cannot make the change.

    Paper I-9: The employee should draw a line through the incorrect selection, enter the correct status, and initial and date the correction.

Electronic I-9: The employee should update Section 1 within the system following its correction process, ensuring the system captures a clear audit trail of the change.

Corrections must be transparent, timely, and made by the employee, as improper handling can result in a substantive violation during an audit.

11. **Can you please confirm whether employees hired before 11/6/1986 are still exempt from Form I-9 requirements.**
    You are not required to have a Form I-9 for employees hired prior to 11/6/1986.