

Tips and Tools for Employers: I-9 Audits, Raids and No-Match Letters

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Disclaimer

The materials presented at this presentation are for informational purposes only and not for the purpose of providing legal advice.

Topics

- I-9 Forms and Audits
- Skit - Employer's Rights When Contacted by ICE
- Social Security Administration No-Match Letters



Raid vs. I-9 Inspection



Who may conduct an I-9 Inspection?

- U.S. Department of Homeland Security/ICE
- U.S. Department of Justice Immigrant and Employee Rights
- U.S. Department of Labor

Does an I-9 Inspection require a warrant?

- Government does not need a warrant/subpoena to inspect I-9s.
- Must provide at least 3 days notice (“Notice of Inspection”).
 - *** If they arrive without notice and demand immediate inspection, you may withhold consent!
- May present a Warrant -- if they are conducting a raid with a warrant, and also seek to inspect I-9s, make sure I-9s are listed in the warrant.

What can be inspected?

- I-9s & supporting documents retained for compliance
- Supporting documentation includes:
 - Photocopies of I-9 documents stored with I-9s
 - If stored electronically, associated audit trails that show the actions performed within or on the system during a given period of time
 - Payroll records, employee lists, corporate documents

Employment Eligibility Verification
Department of Homeland Security
Employment Eligibility System
Employment Eligibility System
Employment Eligibility System

Section 2: Employer or Authorized Representative Review and Verification
Employment Eligibility System
Employment Eligibility System
Employment Eligibility System

Employee ID from system: [Field]
Last Name (Family Name): [Field]
First Name (Given Name): [Field]
SSN: [Field]
Employment Authorization Status: [Field]

Verify Modify Employment Authorization

Document File [Dropdown]
Verify [Button]
Document File [Dropdown]
Verify [Button]
Document File [Dropdown]
Verify [Button]

National Information [Field]



Where will the inspection take place?

- Employer must make I-9s available upon request at the location requested.
- Officials will generally specify where they will conduct the I-9 inspection.
 - May be at the Employer's workplace
 - Employer may be asked to bring form I-9s to ICE field office
 - Employer may be able to arrange to meet at offsite storage
 - May be asked to send in records in electronic or hard copy format

Employer's responsibilities during an I-9 Inspection

1. Retrieve and reproduce the I-9s and supporting documentation requested.
2. Provide the inspecting officer with appropriate hardware and software, personnel, and documentation necessary to inspect electronic documents.
3. Provide the inspecting officer, if requested, any reasonably available or obtainable electronic summary file(s), such as spreadsheets, containing all of the information fields on any electronically stored I-9s.

E-Verify

- Voluntary unless:
 - Employers with federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause
 - Some states require for public and private employers: Alabama, Arizona, Mississippi, North Carolina, South Carolina
 - A number of states require for public employers only
 - California: prohibits state or local governments from requiring use of E-Verify

E-Verify Employers

- Must review “tentative nonconfirmation” (TNC) responses with employee and report back to SSA/DHS with details on resolving the TNC.
- Must permit DHS or SSA to make periodic visits to review E-Verify records and interview employees.
- Must agree to governmental information sharing.

E-Verify Employers

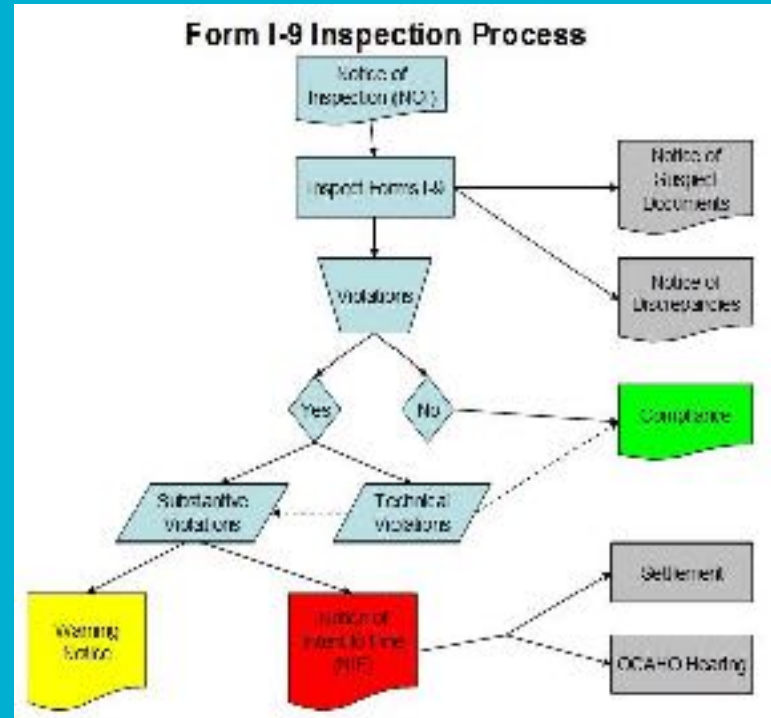
- Print confirmation page and keep with I-9 file for same time period as Form I-9 along with any other printouts from E-Verify system.
- Provide E-Verify Case Detail Pages in addition to I-9s when they receive a request for inspection.

What are they looking for?

- Re-verification processes
 - If documentation of employment authorization has expired
 - If employee is rehired within three years of date Form I-9 was originally completed
 - If employee changes his or her name (optional)
- File retention
 - All current employees
 - Former employees: 3 years from date of hire or 1 year after employment terminates, whichever is later

Possible Results of an I-9 Inspection

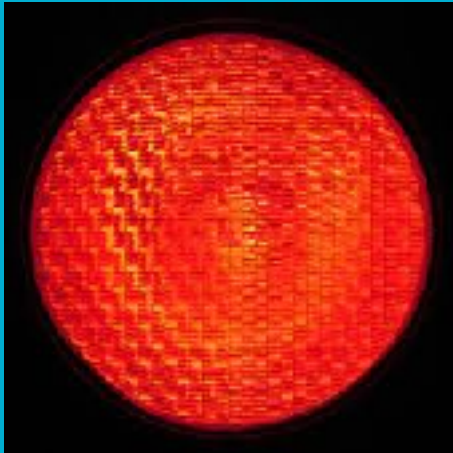
- Notice of Inspection Results/ Compliance Letter
- Notice of Suspect Documents
- Notice of Discrepancies
- Notice of Violations
- Warning Notice
- Notice of Intent to Fine



Notice of Inspection Results/Compliance Letter



Notice of Suspect Documents



- ICE determination that employee is unauthorized to work and advises of possible criminal and civil penalties for continued employment.
- Typically ten days or terminate.
 - ICE provides employer and employee opportunity to present additional documentation to demonstrate error.

Notice of Discrepancies



- ICE has determined that it has been unable to determine work eligibility for an employee.
- Employer should provide employee a copy of the notice and give employee opportunity to present ICE with additional documentation to establish employment eligibility.

Notice of Technical or Procedural Failures

- Identifies technical violations during inspection.
- Gives employer ten business days to correct form.
- If not corrected in ten business days, will become substantive violation.

Warning Notice



- ICE identified substantive verification violation but does not warrant monetary penalty.
- ICE expects future compliance by employer.

Notice of Intent to Fine (NIF)



- Substantive and uncorrected technical violations:
 - Penalties: \$230-2,292/violation
- Knowingly hire and continuing to employ violations:
 - Penalties: \$573-4,586/violation (1st) up to \$22,927/violation (if multiple)
 - Criminal prosecution
 - Debarment

Factors in Determining Penalties

1. Size of business
2. Good faith effort to comply
3. Seriousness of violation
4. Whether the violation involved unauthorized workers
5. History of previous violations

Notice of Intent to Fine - Employer Options

- Negotiate settlement
- Request a hearing to contest (30 days)
- Do nothing, ICE issues final order and employer must comply

Managing employees during an I-9 audit

- Be transparent about the process, let employees know you are undergoing an audit.
- Provide employees with reasonable amount of time to correct discrepancies in their records.
- Treat all employees the same manner during audit.

Managing employees during an I-9 audit

- If employees represented by union, inform the union of the audit and determine whether CBA triggers any obligations.
- Communicate in writing with employees regarding the information needed.

How to prepare for an I-9 audit?

- Review I-9 policies and practices to make sure they are consistent with the law.
- Conduct internal I-9 audits to ensure actual compliance.
- Train supervisors/managers on how to properly fill out, store I-9s.

How to prepare for an I-9 audit?

- Train employees on how to recognize an I-9 audit notice and develop protocol for handling notice.
- Have attorney on retainer so that you can quickly respond to a notice of an I-9 audit.

Skit!

To: Immigration or Other Officer

Right now I am choosing to exercise my legal rights.

- I will remain **silent**, and I refuse to answer your questions.
 - If I am detained, I have the right to contact an attorney **immediately**.
 - I refuse to sign anything without advice from an attorney.
- Thank you.

Al funcionario de inmigración u otro tipo de funcionario:

En este momento elijo ejercer mis derechos legales.

- Permaneceré en **silencio**, y me niego a responder a sus preguntas.
 - Si me detienen, tendré el derecho de comunicarme con un abogado **inmediatamente**.
 - Me niego a firmar nada sin haber consultado con un abogado.
- Gracias

<https://oregonimmigrationresource.org/resources/>

YOU HAVE RIGHTS
You have rights under the U.S. Constitution and other laws.
All people in the U.S., whether citizen or non-citizen, have certain rights under the U.S. Constitution and other laws.

STOP
You have the right to refuse consent for immigration or the police to search your car, your car or your home.

You have the right to remain silent. If you want to exercise that right, you should say "no" at our level.

You have the right to speak to an attorney before answering any questions. You may say, "I will remain silent until I speak to an attorney."

If you are not a U.S. citizen, you have the right to call the consulate of your home country, immigration and police your attorney, consulate, visit or speak with any.

You do not have to sign anything that you do not understand.

You have the right to a copy of all your immigration papers.

This is an informational legal notice.

Visit iAmerica.org @iAmericaOrg www.facebook.com/iAmericaOrg

<http://iAmerica.org/know-your-rights>

How Employers Can Be Prepared!

1. Make a written response plan.
2. Train employees on plan and their rights.
3. Mark private areas of the business.
4. **Compile I-9 forms, separate from other personnel files.**

If a ICE Detains an Employee, How an Employer Can Help

1. Get Information: Who made the arrest? Where did they take them?
2. Keep track of employees.
3. Convey information to the family.
4. Document all conversations with ICE officers.
5. Help the family find an attorney & connect with social services
6. Consider helping the family to pay the bond.
7. Make sure the employee has been paid in full.



AB 450 Notice Template

NOTICE TO EMPLOYEE

Labor Code section 50.2

Effective January 1, 2011, except as otherwise required by federal law, section 50.2(a)(2) of the California Labor Code requires employers to provide notice to current employees of any inspection of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency by posting a Notice, in the language the employee normally uses to communicate employment-related information to the employer, within 10 days of receiving notice of the inspection.

Name of the Immigration Agency Conducting the Inspection (more than one box may be checked, as appropriate):

- ICE (Immigration and Customs Enforcement)
- USCIS (Department of Homeland Security)
- USCIS (United States Citizenship and Immigration Services)
- Other: _____

Has the Employer Received the Notice of Inspection: _____

Was the Inspection Will be Conducted: _____

Location of the Inspection:

- At the employer's place of business or workstation located at the following address: _____
- At a location other than the employer's place of business or workstation

Subject of the Inspection (in the event known, check all that apply):

- I-9 forms
- Supporting documents for I-9 forms (such as passports, driver licenses, social security cards, permanent resident cards)
- Payroll records and data including employee names, social security numbers, hire dates
- California Statewide Contribution Information Report of Wages (from FIC or FICR)
- Quarterly Unemployment Paper
- Copies of employee (including names, social security numbers, hire dates, etc.)
- Any correspondence from the Social Security Administration regarding mismatched or no-matched social security numbers
- Documentation or correspondence identifying participation in E-Verify or the Social Security Number Validation Service
- Other information or documents listing or identifying employees or their personal information (names, SSN's and dates): _____

A copy of the Notice of Inspection of I-9 Employment Eligibility Verification forms, and any accompanying documents, must be posted or given to employees with this notice.

NO MATCH LETTERS

A renewed program of the
Social Security
Administration

- What you will learn from this segment:
 - What is a No-Match Letter?
 - What should you do if you get a No-Match Letter?
 - Protecting your rights and those of your employees.
 - Where to go for additional resources.
-

No-Match Letters – Not An Indicator of Work Authorization Status!

Program began in 1993; ended in 2012 announced in 2018 that the program would resume.

- Stated goal is to ensure proper reporting of Social Security contributions.
 - Why? Improper reporting of earnings can affect future retirement and/or disability benefits of the employee.
- A No-Match letter is sent where the Social Security Number (SSN) on an employer's Form W-2 does not match SSA's records.
 - More than one employee may appear on the notice.
- A No-Match Letter may issue for numerous reasons:
 - A typographical error on the Form W-2 such as misspelling the name or writing the wrong number down.
 - The worker's name may have changed because of divorce, marriage, personal choice.
 - The worker's name may have been entered in the wrong order ("Erin Pettigrew Maureen" v. "Erin Maureen Pettigrew").

TRUE OR FALSE?

- A No-Match Letter does not, standing alone, indicate that your employee has used a false or fraudulent social security number.
- The Social Security Administration advises against taking any adverse action (firing, demoting, placing on leave) any person as a result of a No-Match Letter.
- A No-Match Letter may occur due to a misspelling or error in a Form W-2 provided by the employer to government.
- A No-Match Letter indicates that the employee is undocumented.
- A No-Match Letter indicates that ICE will suspect that you have employees who lack work authorization, and a raid or an audit will follow.
- ICE and the Social Security Administration are the same and share information.
- After receiving a No-Match Letter, you should fire anyone on that letter because they don't have legal status to work.

What should an employer do?

Basic tips for responding to a No-Match Letter

Preview: you are not required to do anything. Seeking legal advice before taking any action is recommended.

The Social Security Administration recommends:

- Checking your records to see whether you correctly entered the employees' information in the form W-2 – it could have been an administrative error.
 - Provide any corrections within 60 days of receiving the letter on a Form W2-C.
 - You may inquire, **but you are are not required to ask**, whether the identified employee wishes to make any corrections to the SSN on their W-2. If you do so, the employee has a right to a reasonable time to provide that information – as much as 120 days. **Informing the employee that there was a no-match is not the same as asking or inquiring about immigration status. It is not recommended to ask about immigration status at any time.**
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Sample Letter Employers Can Give to Employees (From SSA.gov)

We verified the following information with Social Security on this date:

Name

Social Security Number

According to Social Security, the information above does not match Social Security's records. You should:

1. Check to see if the information above matches the name and Social Security Number on your social security card. If it does not match, please provide me with the exact information as it is shown on your Social Security card.
2. If the information above matches your card, please check with any local Social Security office to resolve the issue. Once resolved, please inform me of any changes. Go to www.ssa.gov or call 1-800-772- 1213 to find the office nearest you.

NOTE: This notice does not imply that you intentionally provided incorrect information about your name or Social Security Number, nor does this adversely affect your employment.

Sample Letter from SSA (from SSA.gov)

Social Security Administration Retirement, Survivors and Disability Insurance Employer Correction Request

Date: EIN:
Tax Year: Receipt Year: W-2C:
Version #: (From SSA Address) (From SSA Address)

W-2 Security
Processed W-2 Count:

EMPLOYER'S NAME
STREET ADDRESS

Why You Are Getting This Letter

You reported XX employee names and Social Security numbers (SSN) on the Wage and Tax Statement (Forms W-2) for tax year XXXX that do not match our records. We need corrected information from you so that we can reconcile employer wage reports and credit your employees' earnings to their Social Security records. It is important because these records can determine if someone is entitled to Social Security retirement, disability, and survivors benefits, and how much he or she can receive. If the information you report to us is incorrect, your employee may not get benefits he or she is due.

There are a number of reasons why reported names and SSNs may not agree with our records, such as typographical errors, unreported name changes, and inaccurate or incomplete employer records.

IMPORTANT: This letter does not imply that you or your employee intentionally gave the government wrong information about the employee's name or SSN. This letter does not address your employee's work authorization or immigration status.

You should not use this letter to take any adverse action against an employee, such as laying off, suspending, firing, or discriminating against that individual, just because his or her SSN or name does not match our records. Any of these actions could, in fact, violate state or federal law and subject you to legal consequences.

See Next Page

What You Should Do

To view the names and SSN that could not be matched to our records, please use the Employer Report Status within Business Services Online (BSO). To begin using BSO, you must complete a one-time registration process. To register, go to www.socialsecurity.gov/bsowelcome.htm. You may also file your Form W-2C corrections using W-2C online.

Additionally, we provide a free Social Security Number Verification Service (SSNVS) through BSO that allows you to verify employees' names and SSNs in our records in advance of filing your annual Forms W-2 submissions. Using SSNVS can significantly reduce errors through BSO.

Please review the name and SSN information you submitted on the Form W-2 and provide us necessary corrections on the Form W-2-C within 60 days of receipt of this letter so we can maintain an accurate earnings record for each employee and make sure your employees get the benefits they are due.

If You Have Any Questions

If you have any questions, please call us toll-free at 1-800-772-6270 (TTY 1-800-325-0778) between 7 a.m. and 7 p.m., Eastern time, Monday through Friday. We can answer most questions over the phone. If you call, please have this letter with you. It will help us answer your questions. Also, general program information is available from our website at www.socialsecurity.gov/employer.

Social Security Administration

DON'T!

What should an employer NOT DO?

Lots of things!

- Don't re-verify certain employees' immigration status or ask them about their immigration status based on a No-Match letter or other possibly discriminatory basis - doing so may expose you to claims of national origin discrimination or racial discrimination.
- If you engage in a company-wide, nondiscriminatory re-verification process, employees may choose to provide whatever documentation they choose to prove work authorization; an SSN may not be required unless you use E-Verify.
- Don't fire, demote, harass, or discriminate against any employee because you received a No-Match letter.
- Don't publicize or otherwise violate your employees' privacy by sharing the fact of a No-Match letter with anyone other than the employee themselves and your attorney.

**A restaurant owner
got a no match
letter... she seeks
advice from her
counsel...**

Discussion & Questions and Answers

Additional Resources:

What to do if Immigration Comes to Your Workplace, National Immigration Law Center and National Employment Law Project

<https://www.nilc.org/wpcontent/uploads/2017/07/EmployerGuide-NELP-NILC-2017-07.pdf>

Oregon Immigration Resource <https://oregonimmigrationresource.org/resources/>

National Immigration Law Center (No Match Letters Toolkit): <https://www.nilc.org/issues/workersrights/no-match-letter-toolkit/social-security-no-match-letters-faq/>

**Portland Immigrant Rights Coalition
Rapid Response Hotline
1-888-622-1510**

Thank you!