

New Guidance for I-9 Self Audits

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Recently, the ***U.S. Immigration and Customs Enforcement*** (which enforces I-9 compliance) and the Office of Special Counsel (which enforces the anti-discrimination portion of the Immigration and Naturalization Act) issued a joint “[Guidance](#)” for employers conducting internal I-9 audits.

The Guidance provides some practical tips on conducting an internal audit of I-9 forms, including:

1. Review all I-9s or a subset that is randomly selected. Do not select a group of I-9s to audit based on the nationality or race of the employees who completed the I-9s.
2. To correct an error, draw a line through the incorrect information, enter the correct information and initial and date the correction. Do not conceal the incorrect information (using whiteout or a marker) or erase the incorrect information.
3. **Do not backdate corrected I-9 forms.**
4. If you need to add information that was incorrectly left out, insert the new information and sign and date the addition.
5. Deficiencies in Section 1 of the I-9 form should not be corrected by the employer. Only the employee should correct Section 1. If the employee is no longer available, attach a memorandum to the deficient I-9 noting that a correction is not possible because the employee is not available.
6. If the audit shows that the wrong version of the I-9 form was used, make a note and attach it to the outdated I-9. There is no need to complete a new I-9.
7. If you discover that an I-9 form was not completed, you should complete a new form using the current version and attach a note to the I-9 form as to why it was completed at a later date.
8. When correcting a deficiency based on a missing document or an incorrect document, allow

the employee to choose which of the acceptable I-9 documents they want to use to correct the problem.

9. Never require the presentation of specific documents when completing or correcting an I-9 form. The employee may choose any combination of acceptable documents to present.
10. When an employee comes forward with a new identity, you may continue to employ them but are not required to do so. Have the employee complete a new I-9 form and attach it to the old I-9 form. Attach a note to the I-9 forms explaining the situation.
11. If the audit shows you have missed using E-Verify when you were required to, submit the matters to E-Verify. We are reminded not to terminate employees that receive Tentative Non-Confirmation in E-Verify system.
12. If an employee confesses that he or she is not authorized to work during an audit (or at any other time), you cannot legally continue to employ them.
13. If a question arises during an audit regarding the validity of a document, and the employee asserts that they are authorized to work, the employee must present a new document. You can give the employee a reasonable amount of time to obtain the document. Interestingly, the Guidance notes that some documents may take 120 days to obtain. The reasonableness of the time given to obtain a new document is judged on a case-by-case basis. Make notes in the file on the time given and any need for an extension.
14. You do not need to audit an employee's I-9 form if you receive an anonymous tip or information that is not reliable regarding that employee's authorization to work.
15. Do not use the Social Security Number Notification Service as part of your audit of I-9 forms.

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National Law Review, Volume VI, Number 7

Source URL: <https://natlawreview.com/article/new-guidance-i-9-self-audits>