

Comply or Pay the Price: Why I-9 Noncompliance May Cost You Millions

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The following overview of recent immigration-related penalties should convince companies to implement and maintain a solid I-9 completion and maintenance program. At the outset, program implementation requires investments of time and money. But the expenses pay off in the event a company faces a “site visit” from the U.S. Customs and Immigration Enforcement (ICE), the agency responsible for the I-9 program. Other U.S. government agencies, like the Department of Labor Wage and Hour Division can conduct I-9 audits as well when auditing other company programs. Employers have immigration-related compliance obligations regardless of whether they employ foreign nationals. I-9 obligations are imposed on all employers regardless of size. Significant I-9 penalties have been levied against companies that did not even have foreign nationals on their payrolls. They simply failed to comply with the legally required verification of employment eligibility of each new hire, or they discriminated against certain new hires during the I-9 completion process. Penalties imposed in an I-9 audit are always fact-dependent and vary depending on the employer’s response to audits or investigations, which can gravely impact the outcome of any investigation. Penalties may be both civil and/or criminal in nature with restitution in the high five- to six-figure range. The following penalties assessed in recent I-9 investigations or audits should make companies consider implementing a strong I-9 compliance program:

- Macy’s was assessed a \$275,000 penalty in June 2013, for discrimination in the I-9 completion process.
- McDonald’s, the Wichita-based franchise, was assessed a \$400,000 fine in December 2012 for knowingly accepting false documents.
- ABC Professional Tree Services, Inc., was assessed a \$2 million penalty in July 2012, for violations that included failure to comply with employment eligibility verification requirements.
- American Apparel lost more than \$86 million in 2010, due to a 2009 ICE I-9 inspection that resulted in the loss of 2,500 employees.

- Infosys Limited was assessed combined penalties of \$34 million for a variety of immigration-related violations, including a \$5 million penalty for systematic failure to maintain Forms I-9. Specifically, an audit of the company's Form I-9 records revealed that more than 80 percent of the forms for 2010 and 2011 contained substantive violations. In addition to the fines, the company was required to submit to additional audits by an independent third party auditor for a minimum of two years.

The Obama administration has committed to a worksite enforcement strategy that focuses on employer compliance and much higher administrative fines. Interestingly, some of the ICE audits noted above were conducted pursuant to anonymous tips about unlawful hiring practices. For this reason it is important that employers comply and be prepared for ICE visits, audits, and investigations. These visits are a real possibility. The related fines are high and costly - in many ways. Fines can range from a few hundred dollars to as much as \$16,000 per violation. Other potential penalties include prison time for knowingly hiring (six-month sentence) or harboring (10-year sentence) an undocumented worker, plus the costs of legal fees, negative publicity, and lost productivity. Also, know that what begins as a simple I-9 audit may become an investigation of other issues such as tax fraud, Social Security fraud, bank fraud, and/or false statements. The importance of implementing a cohesive, strong, and effective I-9 completion and maintenance program cannot be understated given the enforcement climate. "If companies know we're out there, looking across the board, they're most likely to bring themselves into compliance," said Brad Bench, special agent in charge at ICE's Seattle office.

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