



The Federal Government is very serious about Compliance.

Is your Company prepared?

## **I-9 COMPLIANCE:**

The Accuform I-9® Action Plan to Help Avoid Fines, Penalties and Business Disruption

### **INTRODUCTION**

Recent Immigration and Customs Enforcement (ICE) raids and audits have raised serious employment concerns in American industry. Wage pressure, turnover rates and large percentages of immigrant and hourly workers increase an employers' risk for noncompliance. What can businesses do to hire qualified employees and ensure legal compliance? Accuform I-9® has assembled an *Action Plan* for employment eligibility verification that employers need to implement to increase compliance and help avoid steep fines, penalties, negative publicity and business disruption.

### **EMPLOYMENT VERIFICATION: WHAT IS IT ALL ABOUT? WHY SHOULD I CARE?**

Over the past twenty years, worker authorization or right to work authorization enforcement from the federal government has increased. In the past five years, many state and local governments have also entered the enforcement arena. This trend has caused employers to become confused about the importance, process and requirements of completing the Form I-9.

Four factors have revived compliance concerns:

1. The stagnant U.S. economy;
2. Continued high U.S. unemployment rates (+9%);

3. The number of undocumented workers in the U.S. - According to government studies, there are an estimated 11.2 million illegal immigrants in the U.S. today; and
4. The Obama Administration's aggressive, targeted approach to Immigration Reform.

## Background of the Form I-9

In 1986, President Ronald Reagan enacted the *Immigration Reform and Control Act* (IRCA) to curtail illegal immigration. IRCA mandates that U.S. employers must verify the employment eligibility status of newly hired employees, and makes it illegal for employers to knowingly recruit, hire or employ unauthorized workers.

The IRCA law changed the hiring landscape for employers in two distinct ways:

- IRCA imposed significant legal, financial and public relations risks for noncompliance; and
- IRCA forced employers to understand and then self-enforce immigration law.

The bottom line is that IRCA made employers responsible for ensuring a legal workforce. Any failure to employ anything other than an authorized worker subjects the employer to penalties, fines, and possibly criminal prosecution including jail time.

## Immigration Reform Shifts Focus

In 2008 the Obama Administration's Immigration Reform policy began targeting employers rather than individuals. According to U.S. government reports, Immigration and Customs Enforcement (ICE) quadrupled the number of worksite inspections and audits performed for illegal workers within the past two years.

In calendar year 2010, ICE reported the following enforcement results:

- Removing 392,000 individuals, including 195,000 convicted criminal foreign nationals.
- Bringing criminal charges against a record-breaking 180 owners, employers, managers and/or supervisors — up from 114 in FY 2009 and 135 in FY 2008.
- Conducting more than 2,900 Form I-9 audits — up from 1,400 in FY 2009.
- Imposition of approximately \$50 million in financial sanctions.
- Debarment of 97 businesses and 49 individuals in FY 2010, up from 30 businesses and 53 individuals in FY 2009.

John Morton, the head of ICE, said the goal of the audits is to create “a culture of compliance” among employers, so that verifying new hires would be as routine as paying taxes. ICE leaves it up to employers to fire workers whose documents cannot be validated. But an employer who fails to do so risks prosecution.

Employment verification is not a choice; it's the law. Katie Martinka, an attorney and I-9 compliance specialist at Accuform I-9 recently stated, “The Form I-9 is critically important.

Every business needs to make sure the people they're employing are legally authorized to work. If you are not completing I-9s as required by law, you're breaking the law."

So what can employers do to mitigate employment risks, ensure they are hiring authorized employees and eliminate ICE concerns?

## THE ACCUFORM I-9 ACTION PLAN FOR EMPLOYERS

### 1. Identify and designate a trained, internal HR leader to centralize the employment verification process.

Assigning an individual who is dedicated to and responsible for leading the work authorization process, internal policies and communication. Complicated paperwork, strict deadlines, continuous regulation updates, and turnover rates need constant attention to meet employment requirements.

The seemingly simple Form I-9 has been the root of hiring headaches and hefty fines since its inception. The average ICE audit of a company typically results in an +\$110,000 fine as I-9 error rates range from 15 to 80 percent, not to mention the hidden cost of business disruption and negative publicity. The majority of Form I-9 complications stem from data inconsistency, incomplete documents, lack of employer familiarity with identification documents, and required document retention timeperiods.

Other common issues include:

- **Defining an employee** – Do part-time workers, interns and temps require paperwork? What about contractors?
- **Process consistency** – Are managers required to retain copies of every employee's documents?
- **Re-verification** – when is it required? What is required? Who does the work?

One of the best defenses against noncompliance is to designate an individual - the Compliance expert - who can answer these questions and more.

### 2. Write, record and publish internal compliance policies, procedures and training programs.

A single Compliance expert for employment verification controls and communication is critical. In addition, employers should have a written, unified employment verification policy and procedure to which all employees and business units must adhere. The designated Compliance expert should create a detailed process document to streamline the verification process and train a core group of additional company Form I-9 specialists. An educated team of managers and/or HR professionals can provide an extra level of compliance security for businesses.

Establish an internal policy that incorporates the Action Plan elements in this white paper. Utilize government-sponsored resources, such as the U.S. Citizenship and Immigration Services website (<http://www.ice.gov/>) and online Form I-9 handbook.

### 3. Safely store Form I-9 documents in a secure location.

Under no circumstances should an employer store the Form I-9s in the employee's personnel file. Form I-9s need to be safely stored separate and apart from the personnel files.

Employment verification laws mandate strict and lengthy employee document retention requirements. Organized storage systems must be implemented to manage the volume, sensitivity and benchmark dates of verification paperwork - dates that range from three years after an employee's hire date or one year after his or her termination date, whichever is later.

Signed Form I-9s are not the property of an employer; they are considered U.S. government property that employers simply retain physical custody of after they are completed. Your company's signed Form I-9s are not back-up documents, but legal records that demonstrate employer compliance with federal law.

Failure to create a system to track Form I-9 expirations and conduct re-verifications could be used later as evidence that a business knowingly violated eligibility laws. Employers must complete the Form I-9 within three business days of hire and re-verify work authorization documents the day of expiration. There is no grace period for employees who are disorganized or unable to find documents or for employers who fail to re-verify an employee's work authorization.

### 4. Conduct regular audits of all Form I-9 files.

Regular internal audits and an annual external audit help ensure verification policies are in compliance with the most current local, state and federal regulations. Audits also increase process efficiency and builds good faith should you be notified of an ICE audit or raid. If companies establish a pattern of improperly completed Form I-9s, the government may conclude that the employer knowingly hired unauthorized aliens.

Importantly, regular auditing policies can save businesses the steep fines, reputation damage and penalties - including criminal prosecution - that accompany noncompliance.

Immigration and Customs Enforcement (ICE) and the Department of Labor (DOL) have responsibility for enforcement of the Form I-9 compliance law. In the event of an audit, employers may face significant fines for unlawful hiring and employment practices:

- Failing to properly complete, retain or make Form I-9's available for inspection, fines range from \$110 to \$1,100 per individual Form I-9.
- Knowingly hiring or knowingly continuing to employ unauthorized workers, civil penalties range from \$250 to \$11,000 per violation.
- Engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized workers can be as much as \$3,000 per employee.

- “Substantial failure” to comply with requirements may result in fines of \$1,000 to \$35,000.
- In addition to fines for failing to properly maintain documents, the Department of Labor can order back pay to unauthorized workers.

## 5. Establish reporting procedures for employees and employers.

Formal reporting and response policies are proactive practices employers can put into place to help detect suspicious activity and streamline communication. Establish a “tip line” mechanism (inbox, email, voicemail, etc.) for employees to report activity relating to the employment of unauthorized workers.

Businesses should also mandate response procedures for employers. Credible employee tips and information, including suspected criminal misconduct by employers, should be reported to ICE. Formal internal communication guidelines in the event of an audit should also be established.

The Department of Labor, U.S. Department of Justice’s Office of Special Counsel, and ICE have the authority to inspect an organization’s Form I-9s without a warrant or subpoena. ICE is the largest investigative arm and conducts the most Form I-9 audits of the three agencies. It has the authority to initiate an investigation on its own without a written complaint, but generally conducts worksite audits:

- After receiving potential credible leads and facts about unauthorized workers at an employer’s worksite; and
- Using sophisticated mathematical models that select employers.

Though ICE does not publicly state its preliminary investigative methods, sources cite employer history, business industry, concentration of illegal aliens in the area, other government agency referrals and worksite observations as additional factors that can trigger an audit.

The rules regarding Form I-9 compliance are not always clear. This uncertainty creates document completion, re-verification and retention confusion for employers. Substantial compliance and good faith are defenses to paperwork violations. Incorporating this *Action Plan* into your verification process can help mitigate monetary penalties.

## AN OPTIMUM SOLUTION: AUTOMATE THE PROCESS

The government, compliance specialists and HR generalists agree: automated Form I-9 software systems are the optimum choice to: simplify the employment eligibility process; ensure higher levels of legal compliance; and reduce related fines and hiring and turnover costs. Automated systems can integrate hundreds of best practices to limit exposure to common and complicated mistakes made by manual verification processes.

USCIS regulations permit, and even encourage, electronic employment eligibility verification. Employers may also use a combination of paper and electronic systems.



After designating a Compliance expert to control Form I-9 processes, Accuform I-9's advice to clients is to get onto an electronic system. With paper Form I-9s, an employer has over 40 different opportunities to make a mistake. Managers are going to make those mistakes and mistakes are going to cost you money.

## **BENEFITS OF AN AUTOMATED SOFTWARE SYSTEM**

Employers can save significant time, money, eliminate business disruption and potential negative publicity with automated Form I-9 software, such as [Accuform I-9](#).

### **Constant Updates**

Accuform I-9 is a Software-as-a-Service. There is no software to download and Accuform I-9 updates automatically with the latest legislation, requirements, and forms. This action ensures that your business always has the most up-to-date information.

### **Form I-9 Validation & Error checking**

Form field validation and automatic error checking - including accepted-document numbers and information specific to the respective document, issuing institution, state, year, etc. - and other features help guarantee employers collect, enter and retain all required information. These automated features help employers consistently and correctly fill out the Form I-9 and reduce the risk for incorrect paperwork fines. Electronic forms also protect against legibility issues.

### **Integration with E-Verify**

Accuform I-9 interfaces with the government's E-Verify program. E-verify is a compliment to the Accuform I-9 software and not a replacement. E-Verify is an Internet-based system that instantly compares an employee's I-9 information to Department of Homeland Security and Social Security Administration records to confirm employment eligibility. Accuform I-9 enables an employer to E-Verify new hires within 15 seconds or less.

### **Official Designated Agent #91744**

Accuform I-9 spent over a year becoming certified as a Designated Agent of the Department of Homeland Security (DHS). This certification was of the Company's software, server and practices. In fact, the DHS uses the Accuform I-9 system as a beta for changes they are making to their processes. This allows Accuform I-9 to customize and cater to a customer's requirements while its competitors only pipe information into a web-based server.

### **Secure Document Library**

If you're not using an online Form I-9 service, you are asking for trouble. Form I-9's stored in paper files expose the business to the risk of document loss. Extensive Form I-9 retention requirements often equates to storing large volumes of paperwork for long periods of time - complications compounded upon employers by its employee turnover. Electronic document

storage protects against lost, stolen, damaged or tampered Form I-9s and authorization documents.

### Deadline Tracking

The employment eligibility verification process is extremely time-sensitive. Automated solutions track important deadlines, benchmark dates and can alert employers about upcoming action items. Software that tracks and records Form I-9 activity by respective employee increases an employer’s good faith defense in the event of an audit.

### Complete Coverage with all Workgroups

Accuform I-9 is more than software. Its comprehensive service confirms the right to work of three workgroups – i) current or existing employees; ii) new hires; and iii) vendors and sub-contractors – and provides the employer with complete start-to-finish Form I-9 coverage.

Accuform I-9, as demonstrated in the chart below, is the only software provider that has the capability to confirm the right to work of each of these three work groups. Most of the competitors are large, enterprise systems that have a module focusing solely on confirming and memorializing the right to work of New Hires via an interface to E-Verify. Although this module allows a company to check New Hires against E-Verify, it leaves all existing employees unchecked. Existing employees are the area of largest exposure for any employer. Only Accuform I-9 offers its clients a service to convert existing employees Form I-9s to an electronic format. This simple process provides employers peace of mind knowing that they will not be subject to fines due to errors found in their Form I-9s. Also, Accuform I-9 is the only provider to allow its clients to interface with their vendors in order to confirm the vendors are Form I-9 compliant. Under most federal and many state contracts, compliance of a Contractor’s vendors is required.

**Comparison of Accuform I-9 vs. Competitors**

Company	Current Employees Electronic format conversion	New Hires E-Verify interface	Vendors and Subcontractors E-vite, signup & E-Verify
<b>ACCUFORM I-9</b>	<b>X</b>	<b>X</b>	<b>X</b>
E-Verify		X	
Hire Right		X	
Now Hire		X	
Oracle HR		X	
People Soft		X	
Taleo		X	
I-9 Assist		X	
ADP		X	



Any employer that fails to verify the right to work of all three aforementioned workgroups is at risk of penalties and fines for non-compliance.

## **CONCLUSION**

Increased federal enforcement and a shift toward targeting employers has brought employment verification compliance to the forefront of HR concerns.

Ensuring compliance is a complicated, time-consuming and continuous task with steep legal, monetary and public relations risks. Following the *Action Plan* outlined in this white paper is first step to improving processes and establishing a good faith precedent. Comprehensive compliance, however, requires more extensive process development and controls. Automated solutions are the simplest, fastest and most efficient path to employment peace-of-mind and mitigation of risk.

ACCUFORM I-9's software helps U.S. employers achieve comprehensive compliance across all workgroups and saves time, money and business disruption.

Learn more about how Accuform I-9 can help safeguard your business at [accuformi9.com](http://accuformi9.com) or by calling 415.839.9400