

From Technical to Substantive: ICE Redefines Form I-9 Violations

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(by [Steve Antonelli](#))

As an employment and labor attorney, I interact with Human Resources professionals almost every day. While their specific roles vary from employer to employer, there is always some degree of familiarity because Human Resources departments are involved in the entire employment lifecycle. From talent acquisition and benefits administration to performance reviews and personnel management, Human Resources departments are usually involved at every step. Stated differently, Human Resources professionals are busy.

One of their most critical tasks is onboarding because it is the very first interaction between an employer and its new employee. The onboarding process involves training, orientation, and plenty of forms related to payroll, benefits, technology/IT, and a Form I-9 which demonstrates an employee's identity and authorization to work in the United States.

On March 16, 2026, the U.S. Immigration and Customs Enforcement (ICE) revised nearly 30-year-old guidance related to Forms I-9 when it issued an [updated guidance fact sheet](#) that exposes employers to monetary penalties over what, until recently, were mere paperwork errors.

Since the 1990s, ICE has categorized Form I-9 violations into technical and substantive violations. When the former occurs, employers receive time (typically at least 10 business days) to make corrections. When the latter occurs, an employer may receive a monetary fine. While those classifications remain, the standard for what constitutes a substantive error has changed meaningfully. What used to be a technical violation such as an administrative or procedural error or omission could now be deemed an automatic substantive violation that could result in a fine of \$288 to \$2,861.

For instance, if a Form I-9 is missing the employee's date of birth or their date of hire, ICE may deem such an omission as a substantive violation. Before March 16, those same errors were mere technical violations that an employer could correct without a monetary penalty.

Likewise, if a Form I-9 is missing the title of the employer representative who filled out Section 2 of the document, or if the Spanish-language Form I-9 is used outside of Puerto Rico, ICE may deem such an omission as a substantive violation. Before March 16, those same errors were mere technical violations that an employer could correct without being subject to a monetary penalty.

In the wake of this revised guidance, employers should renew efforts to ensure accuracy and completeness of their employees' Forms I-9. Human Resources professionals can add one more thing to their already lengthy to-do lists.

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