

ICE Toughens Rules on Employee Work Eligibility Forms, Including for Virgin Islands Employers

Several errors on employee work eligibility forms that were once considered technical and correctable are now treated by ICE as more serious violations, exposing employers to fines of \$288 to \$2,861 per infraction if discovered during an audit.

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U.S. Immigration and Customs Enforcement has issued updated rules governing violations tied to Form I-9, the document employers must complete for every new hire to verify authorization to work in the United States. The changes are significant because several errors that were previously treated as technical and correctable without penalty are now classified as substantive violations, exposing employers to fines if the problems are uncovered during an ICE audit.

Among the newly substantive issues are missing employee birth dates, missing USCIS numbers where applicable, missing dates next to employee signatures, and the use of a Spanish-language I-9 form outside Puerto Rico.

Form I-9 is required under the Immigration Reform and Control Act of 1986. Employers must complete and submit the form for each new employee at the start of employment, and ICE enforces the law by inspecting and validating the paperwork.

For years, ICE has operated under guidance that separated violations into two categories: substantive infractions, which are subject to fines, and technical violations, which give employers a short period to correct missing or inaccurate information without penalty.

Last month, however, ICE issued a fact sheet that reclassified several violations previously considered technical.

Under the updated rules, I-9 forms submitted without an employee's date of birth, without a USCIS number where applicable, or without a date next to the employee's signature are now considered substantive violations.

The use of a Spanish-language I-9 form outside Puerto Rico is also now treated as a substantive violation. That means employers in the Virgin Islands must ensure the form is completed in English.

ICE has posted an updated list of substantive violations and technical failures on its website. However, the list does not identify which substantive violations were newly reclassified.

If substantive I-9 violations are found during an ICE paperwork audit, employers currently face penalties ranging from \$288 to \$2,861 per infraction.

With the agency increasing scrutiny of the immigration status of the nation's workforce, employers are facing added pressure to make sure Form I-9 paperwork for new hires is completed accurately and without errors.