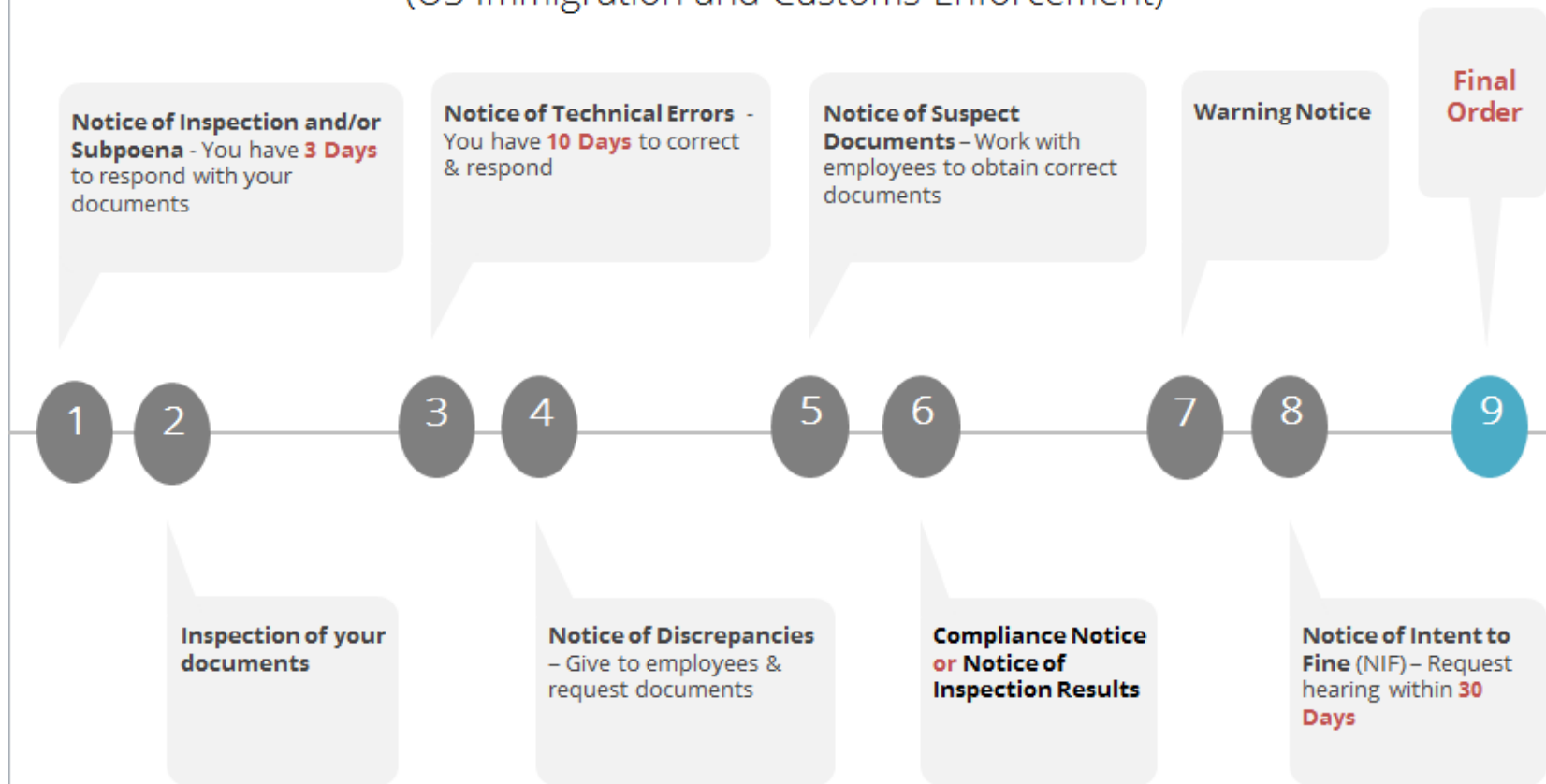


Official Agency Audit Process

(US Immigration and Customs Enforcement)



Here's a quick review of the steps that are involved should you get a visit from ICE:

1. Usually an agent from ICE will actually appear in your office with a **Notice of Inspection** and/or a Subpoena for your I-9 records. You will have 3 days to respond with all your documents.
2. The agent will take your records and inspect them. Sometimes they will do it on-site, sometimes they will take the records to their own facility.
3. You will receive a Notice of Technical Errors listing all the mistakes that were found on your I-9 forms. You will have 10 days to correct the mistakes and respond with new copies. If you fail to do so, these technical errors become substantive violations.
4. If ICE discovers discrepancies in the document information or is unable to verify the employee's work eligibility, you will be issued a Notice of Discrepancies. You will need to give a copy to any affected employee and request that they provide correct documentation as soon as possible, but definitely before the deadline given in the Notice.
5. You may also be issued a Notice of Suspect Documents. This notice advises you that based on a review of the I-9s and documentation submitted by the employee, ICE has determined that an employee is unauthorized to work and advises you of the possible criminal and civil penalties for continuing to employ that individual. ICE provides you and the employee an opportunity to present additional documentation to demonstrate work authorization. So if you believe the ruling is in error, work with employees to obtain the correct documents.
6. If the auditor finds that you are in compliance and have no violations, you will be issued a Notice of Inspection Results, also known as a "compliance letter or compliance notice"
7. A **Warning Notice** is issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation that moving forward you will be in compliance.
8. **Notice of Intent to Fine (NIF)** – may be issued for substantive violations, uncorrected technical violations, or for knowingly hiring and continuing to employ individuals that are not authorized to work in the US. You will have an opportunity to request a hearing with the Office of the Chief Administrative Officer within 30 days or to negotiate a settlement with ICE.
9. If you do nothing by the 30 day deadline, a Final Order will be issued. It will list all the violations and the various penalties and fines you must pay.
10. This process is nothing to sneeze about, so take any and all communication with official government agencies on this topic extremely seriously. Some violations can result in jail time, in addition to steep monetary sanctions.

12 Things ICE May Request During An I-9 Audit

ICE = Immigration and Customs Enforcement Agency (federal)

When ICE comes knocking on your door, you better be ready. And if you think you will never get a visit from them, I guarantee the over 2,000 employers who were audited last year never thought they'd get a visit either. According to Dawn Lurie, a Washington DC attorney who advises businesses on immigration issues, the Obama administration's plans to ensure worksite compliance differs from that of the Bush administration, which focused on high-profile raids that led to arrests of hundreds of workers at a single work site.¹

ICE still conducts raids, but they are smaller and less visible. Audits are usually performed first at a company's headquarters location, but agents are empowered to audit other parts of the company if their records review shows there may be problems beyond the headquarters, Lurie said.

"The inspections will touch on employers of all sizes and in every state in the nation - no one industry is being targeted nor is any one industry immune from scrutiny," ICE said in a statement. The agency declined to name the businesses to be inspected.²

When ICE conducts an I-9 audit, it might seek a wide variety of information, which might include³:

1. Original I-9s. Forms I-9 must be retained for three years after the date of hire or one year after the date of termination, whichever period is longer.
2. A spreadsheet listing alphabetically all current and terminated employees for the period of inspection with hire and termination dates in electronic form Word or Excel, non-PDF, including the names, Social Security numbers and dates of birth of each employee.
3. Copies of quarterly wage and hour reports and/or payroll data for all employees—current and terminated—covering the period of inspection.
4. Quarterly tax statements.

5. Business information, including the employer identification number, taxpayer identification number, owner's Social Security number, owner's contact information (e.g., address, information, phone numbers and e-mail addresses), articles of incorporation (if applicable) and copies of business licenses.
6. Copies of Social Security no-match letters.
7. A copy of any I-9 policy.
8. The name and responsibility of those who complete I-9 forms.
9. The date the business was established, form of the business, where it is incorporated and its revenue.
10. The department or job titles of employees.
11. Quarterly unemployment insurance reports with the state or quarterly returns for Federal Income Contributions Act taxes.
12. ICE also may ask whether the company is a current or previous participant in E-Verify or the Social Security Number Verification Service. ICE officials have subpoena authority.

The administrative inspection or audit process begins with the service of a Notice of Intent (NOI) by an ICE agent and is usually hand-delivered. As noted on the list above, the first documents an employer will be required to produce are the original I-9s for active employees and for employees terminated within the last 12 months. Typically, ICE allows three (3) business days to produce the Form I-9s, not counting the date of service.

Once an employer has turned over the documents to ICE, a Forensic Auditor for Compliance inspects the Form I-9s. When technical or procedural violations are found, an employer is given ten (10) business days to make corrections. Technical violations are generally defined as paperwork violations that would not contribute to the hiring of an unauthorized worker.

However, companies are not provided with an opportunity to correct substantive violations. Substantive violations include missing document numbers and signatures and are generally considered more serious.

Penalties for substantive violations, which includes failing to produce a Form I-9, range from \$110 to \$1,100 per violation. In determining penalty amounts, ICE considers five factors: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers, and history of previous violations. (See INA §274A(e)(5) (8 U.S.C. 1324a (e)(5)))

Monetary penalties for knowingly hiring and continuing to employ violations range from \$375 to \$16,000 per violation, with repeat offenders receiving penalties at the higher end.

If you are one of those unlucky employers that is determined to have knowingly hired or continued to employ unauthorized workers, you can expect to be fined, and, in certain situations, criminally prosecuted by the U.S. Attorney's office. In fiscal year 2010, 2,900 employers were fined \$7M and 196 employers were arrested.

Waiting for ICE to show up at your door before ensuring you are in compliance is not a wise tactic and neither is waiting until you receive a NOI. Review your I-9 policies and procedures for compliance now. Conduct internal audits and address any issues. Do not ignore Social Security no-match notifications or potential identity theft issues and train the individuals completing I-9s. Be proactive!

Don't have an HR Department? Need help with an internal audit? Already hired unauthorized workers and don't know what to do? Your trusted partners are just a call away. Call us today at 972-821-7971.

¹*ICE auditing 1,000 more companies' hiring records, by Suzanne Gamboa, February 17, 2011, Associated Press*

²*ICE auditing 1,000 more companies' hiring records, by Suzanne Gamboa, February 17, 2011, Associated Press*

³*Nationwide I-9 Audits Reflect Shift in Enforcement Strategy, by Allen Smith, July 9, 2009, Society of Human Resource Management Magazine*