



## I-9 Enforcement and compliance in the Obama Era for hoteliers

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As a result of the events on September 11, 2001, the nation has witnessed a dramatic increase in the U.S. government's enforcement of immigration laws. The Immigration Customs Enforcement ("ICE") agency of the Department of Homeland Security, formerly known as the Immigration and Naturalization Service ("INS"), is the federal agency authorized with enforcing these provisions. Through various strategies and actions already implemented by Secretary Janet Napolitano of the Department of Homeland Security ("DHS"), it is clear that the Obama administration will continue this vigorous enforcement to ensure that U.S. employers are employing legal workers.

As a case in point, on July 1, 2009, ICE announced that it is launching a stepped-up I-9 audit initiative and issued "Notices of Inspection" ("NOI") to 652 businesses nationwide that same day. This number is substantially greater than the total number of NOIs that were issued throughout the entire last fiscal year, which was 149. I-9 audits are therefore one of the key pieces in the government's enforcement strategy. In addition, since the hospitality industry is under particularly heavy government scrutiny, hoteliers are well-served by ensuring that they conduct all I-9 obligations in accordance with the law.

During an I-9 audit, ICE will inspect an employer's I-9 forms and possibly other employment/payroll records to ensure that they have been completed in accordance with regulatory requirements and that the employer is not employing undocumented workers. The seeming simplicity and brevity of the Form I-9 belies its technicality, and employers who fail to properly complete these forms do so at their own peril. Failure to properly complete I-9s will be deemed as "paperwork violations" and can subject a hotel to fines ranging from \$110-\$1100 per I-9 violation. While that may seem like a relatively small amount, for lodging companies that employ hundreds of employees, monetary penalties can quickly accumulate to enormous sums. More troubling than monetary fines is the fact that the government has imposed criminal liability on a company's executives and managers where they have knowingly employed undocumented workers. Therefore, in today's climate of heightened enforcement, it is absolutely crucial for any hotel's Management to implement a strong I-9 employment verification program.

At a time when employers' hiring practices are being heavily scrutinized, the best way for hoteliers to insulate themselves from liability is to ensure meticulous compliance with employment verification requirements. While some errors may still occur in the process, an hotelier's good faith efforts at complying with the law will go a long way in mitigating any fines that are ultimately imposed. More importantly, an hotelier's good faith compliance efforts are the key to mounting a strong defense if an employee ultimately turns out to be unauthorized to work in the U.S.

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Hotel managers should implement as many of the following best practices to develop the strongest I-9 program to withstand a government audit, and to defend against penalties if it is subsequently necessary.



**1. Properly complete a form I-9 for all employees that require them.**

Blank I-9 forms can be downloaded from or completed online and then printed out from the U.S. Citizenship and Immigration Services website at this URL: [www.uscis.gov/files/form/i-9.pdf](http://www.uscis.gov/files/form/i-9.pdf)

**2. Conduct periodic internal company audits of I-9 forms.**

Internal Audits will alert the hotel to any deficiencies before the government catches wind of them, which is too late. Hotel Management can then cure those defects prior to a government investigation.

If you come across I-9s that have not been properly completed, you should generally take the following steps: notify the employee, correct the I-9, and have the employee and the office manager initial and date the corrections currently. Do not backdate any corrections made. A simple line should be drawn through any incorrect information on the I-9, and the corrected information should be initialed and dated currently. If the problem occurred in Section 1, the employee must rectify. If the problem occurred in Section 2, that is the employer's responsibility. Alternatively, an employer can complete a brand new I-9 form for an individual and attach it to the original. For a more specific and detailed breakdown of internal I-9 audit procedures, you should seek the advice of business immigration counsel.

**3. Institute a tickler system that will notify you when certain workers' employment authorization will expire and must be reverified.**

Ignorance about an employee's expired work authorization is not an appropriate defense. Don't expect an employee to remind you that he or she is no longer eligible for employment in the U.S. Hoteliers must assume responsibility for tracking these expiration dates and re-verifying employment eligibility of its workers.

**4. Implement a formal I-9 policy in a consistent and nondiscriminatory manner.**

The Immigration Reform and Control Act (IRCA) of 1986, which created the use of the I-9 form, was not intended to discriminate against any individuals except those that are not eligible for legal employment in the United States. But IRCA does hold employers responsible for making good faith efforts to only hire those that are legally eligible for employment in the U.S. by creating a streamlined and standardized verification process. Hoteliers that inconsistently comply with IRCA requirements or utilize this legislation to discriminate based on criteria not related to employment eligibility may be in violation of various government regulations and statutes, each with their own penalties and avenues of redress.

**5. Hotels may voluntarily choose to participate in an online verification program as an additional tool to verify employees.**

E-Verify is an Internet based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Hoteliers should seek the advice of counsel to evaluate whether this would be appropriate for their particular workplace. More information about the E-Verify system can be viewed at [www.dhs.gov](http://www.dhs.gov) and clicking on the E-Verify link.

**6. Provide I-9 training to Human Resources personnel.**

There tends to be a high rate of turnover among HR personnel who carry out an organization's employment verification procedures. Such rampant turnover can lead to inconsistent I-9 completion practices and a higher margin for error. Providing HR personnel with formal I-9 training will help hotels achieve consistent and properly completed I-9s.

By implementing as many of the best practices described above, hotels can mount a strong defense and therefore protect themselves against a potentially devastating worksite enforcement action in the most effective way. ✧



**Did you know?**

**In Fiscal Year 2008, U.S. Immigration and Customs Enforcement:**

- Made more than 1,100 criminal arrests tied to worksite enforcement investigations.
- Of the individuals criminally arrested, 135 were owners, managers, supervisors, or human resources employees facing charges including harboring or knowingly hiring illegal aliens. The remaining workers criminally arrested are facing charges including aggravated identity theft and Social Security fraud.
- Made more than 5,100 administrative arrests for immigration violations during worksite enforcement operations.

Source: U.S. Immigration and Customs Enforcement

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