



IRCA Violations: Assessing Employer Liability

Employers performing regular self-audits of their Forms I-9 may reduce their exposure to liability under the Immigration Reform and Control Act (IRCA) by correcting certain errors in their employment eligibility verification program. This chart from our website provides an overview of potential IRCA violations and sets out how employers can correct certain Form I-9 errors. It also addresses penalties that may be imposed if an employer is subjected to a formal investigation.

PLC Labor & Employment

Under IRCA, all US employers must complete the employment eligibility verification form, Form I-9, for each new employee hired after November 6, 1986. IRCA's employment eligibility verification requirements are enforced by the Immigration and Customs Enforcement (ICE) division of the Department of Homeland Security (DHS). ICE conducts both civil and criminal audits and investigations. Employers may be subject to significant public censure, criminal charges and civil penalties for violations of IRCA.

Possible IRCA violations include:

- Knowingly hiring or continuing to employ an individual who is unauthorized to work in the US.
- Requiring employee payment of an indemnity bond.
- Paperwork violations, including errors in completing the Form I-9.

The following chart explains, for each possible violation:

- What acts make up the violation.
- Whether the employer can correct the violation by conducting a self-audit of its employment eligibility verification program.
- The possible penalties that may be imposed by ICE in the event of an ICE Form I-9 audit.

KNOWING VIOLATIONS

IRCA VIOLATION	CORRECTABLE IN AN EMPLOYER SELF-AUDIT?	PENALTY PROVISION
Knowingly hiring or continuing the employment of unauthorized workers (8 U.S.C. § 1324a(a)(1)(A) and (a)(2) (2010)). Knowing violations occur when employers employ individuals who they know or should know are unauthorized to work.	Yes, if the employer is willing to redress wrongs it knowingly committed. The employer should make corrections immediately, such as eliminating future knowing acts and addressing all prior missing or erroneous Forms I-9.	See below <i>Civil Penalties</i> .
Engaging in a pattern or practice of violating 8 U.S.C. § 1324a(a)(1)(A) and (a)(2) (2010) (8 U.S.C. § 1324a(f) (2010)). Employers that employ unauthorized workers regularly and intentionally are engaging in a pattern or practice of violating IRCA.	Yes, if the employer is willing to redress wrongs it knowingly committed. The employer should make corrections immediately, such as eliminating future knowing acts and addressing all prior missing or erroneous Forms I-9 (however, an employer knowingly engaging in a pattern or practice of IRCA violations may be unlikely to correct that behavior).	See below <i>Civil Penalties, Injunctive Relief and Criminal Penalties</i> .

INDEMNITY BOND VIOLATIONS

IRCA VIOLATION	CORRECTABLE IN AN EMPLOYER SELF-AUDIT?	PENALTY PROVISION
Requiring any employee to pay an indemnity bond as security against liability under IRCA (8 C.F.R. § 274a.8(a) (2011)).	Yes, if the employer is willing to redress wrongs it knowingly committed. The employer should make corrections immediately, such as eliminating future indemnity bond requirements and reimbursing any bonds paid to the employer.	See below <i>Indemnity Bond Penalties</i> .

PAPERWORK VIOLATIONS

Paperwork violations occur when employers fail to properly complete the Form I-9 process required by IRCA (8 U.S.C. § 1324a(b) (2010)). Errors on the Form I-9 may be correctable during an employer's self-audit of its Forms I-9. If errors are identified during an ICE Form I-9 audit, the employer's ability to correct the errors and reduce the penalty assessed against it depends on whether the failure is a substantive or technical violation. Employers performing their IRCA employment verification obligations in good faith are given ten business days from ICE's notice of technical or procedural failures to correct technical violations (8 U.S.C. § 1324a(b)(6) (2010)). After ten days, uncorrected technical violations are considered substantive violations, subject to civil penalties.

Errors made in Section 1 of the Form I-9 must be corrected by the employee, and those made in Sections 2 or 3 must be corrected by the employer. Whether done during a self-audit or after ICE notification, errors should be corrected by:

- Drawing a line through any incorrect information (but not obliterating the incorrect information).
- Inserting the correct information.
- Initialing and dating the change.

(See *Correcting Form I-9*, available at uscis.gov.)

FORM I-9: EMPLOYMENT ELIGIBILITY VERIFICATION

Employers are held responsible for the completion of the Form I-9, and they must use the most current version of the Form I-9 (see *Which Form I-9 Should I Use?*, available at uscis.gov).

FORM I-9 ERROR	CORRECTABLE IN AN EMPLOYER SELF-AUDIT?	ICE FINDING IN AN AUDIT	PENALTY PROVISION
Missing the Form I-9.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
Completing the Form I-9 on an out-of-date form.	Yes.	Not indicated, but may be considered substantive if there is evidence that the employer is not conducting employment eligibility verification in good faith.	See below <i>Civil Penalties</i> .

FORM I-9, SECTION 1: EMPLOYEE INFORMATION AND VERIFICATION

Section 1 of the Form I-9 is used to capture the employee's basic information and signed verification of her own employment authorization. Employees must complete, sign and date Section 1 by their first day of employment (8 C.F.R. § 274a.2(b)(1)(i)(A) (2011)).

Employers may elect whether or not to photocopy documents submitted by employees for the Form I-9 process. Whichever they choose must be applied consistently.

CHECKLIST

FORM I-9, SECTION 1 ERROR	CORRECTABLE IN AN EMPLOYER SELF-AUDIT?	ICE FINDING IN AN AUDIT	PENALTY PROVISION
The employee omitting her complete printed name.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employee not providing her: <ul style="list-style-type: none"> ■ Maiden name. ■ Address. ■ Birth date. 	Yes.	Technical.	See below <i>Civil Penalties</i> .
The employee failing to provide her social security number.	Yes.	Not required, unless the employer participates in E-Verify.	No penalty in an ICE Form I-9 audit.
The employee not checking a box indicating whether she is either: <ul style="list-style-type: none"> ■ A US citizen or national. ■ A Lawful Permanent Resident (LPR). ■ An alien authorized to work. 	Yes.	Substantive.	See below <i>Civil Penalties</i> .
If the employee indicates she is an LPR, failing to include her A number (the alien registration number assigned by DHS).	Yes.	Substantive, unless the A number is included in Sections 2 or 3 of the Form I-9. Technical, if the A number is included in Sections 2 or 3 of the Form I-9 or on a legible copy of a document retained with the Form I-9 and presented at an ICE Form I-9 audit.	See below <i>Civil Penalties</i> .
If the employee indicates she is an alien authorized to work, failing to include her A number or admission number.	Yes.	Substantive, unless the A number or admission number is included in Sections 2 or 3 of the Form I-9. Technical, if the A number or admission number is included in Sections 2 or 3 of the Form I-9 or on a legible copy of a document retained with the Form I-9 and presented at an ICE Form I-9 audit.	See below <i>Civil Penalties</i> .
The employee not signing Section 1 where required.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employee dating Section 1 after her first day of employment, when the first day of employment is before September 30, 1996.	No.	Substantive.	See below <i>Civil Penalties</i> .
The employee dating Section 1 after her first day of employment, when the first day of employment is on or after September 30, 1996.	No.	Technical.	See below <i>Civil Penalties</i> .
The employee failing to date the Form I-9 at all.	Yes.	Technical.	See below <i>Civil Penalties</i> .
The preparer or translator not providing any of the following, if Section 1 is completed by someone other than the employee: <ul style="list-style-type: none"> ■ Name. ■ Address. ■ Signature. ■ Date of service. 	Yes.	Technical.	See below <i>Civil Penalties</i> .

FORM I-9, SECTION 2: EMPLOYER REVIEW AND VERIFICATION

The employer or its representative must review original verification documents (8 C.F.R. § 274a.2(b)(1)(ii) (2011)). The documents presented must be one or more from the US Citizenship and Immigration Services' (USCIS') list of acceptable documents. The document review and certification must occur by the third day after the employee begins employment.

>> For information on the USCIS' list of acceptable documents, search [Demonstrating the Right to Work in the United States](#) on our website.

Section 2 of the Form I-9 is used to by the employer to record:

- The employee's identity and employment authorization document details after reviewing the original documents.
- The employer's signed verification of its review.

FORM I-9, SECTION 2 ERROR	CORRECTABLE IN AN EMPLOYER SELF-AUDIT?	ICE FINDING IN AN AUDIT	PENALTY PROVISION
The employer failing to review and verify proper identity and employment authorization documents.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employer omitting any document title, identification number or expiration date of required List A, List B or List C documents.	Yes.	Substantive, unless a legible copy of the document(s) is retained with the Form I-9 and presented at an ICE Form I-9 audit. Technical, if a legible copy of the document(s) is retained with the Form I-9 and presented at an ICE Form I-9 audit.	See below <i>Civil Penalties</i> .
The employer including too many documents in the Section 2 verification.	Yes.	Not a violation in an ICE Form I-9 audit, but may be a violation of IRCA's anti-discrimination provisions.	For information on the possible penalties for violations of IRCA's anti-discrimination provisions, search Discrimination: Overview on our website.
The employer not signing Section 2 where required.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employer's representative omitting either: <ul style="list-style-type: none"> ■ Her title. ■ The employer's name. ■ The employer's address. 	Yes.	Technical.	See below <i>Civil Penalties</i> .
The employer failing to include the employee's date of hire.	Yes.	Technical.	See below <i>Civil Penalties</i> .
The employer failing to date Section 2 at all.	Yes.	Technical.	See below <i>Civil Penalties</i> .
The employer failing to date the Form I-9 within three business days of the employee's first day of employment, when the third day falls before September 30, 1996.	No.	Substantive.	See below <i>Civil Penalties</i> .
The employer failing to date the Form I-9 within three business days of the employee's first day of employment, when the third day falls on or after September 30, 1996.	No.	Technical.	See below <i>Civil Penalties</i> .

FORM I-9, SECTION 3: REVERIFICATION OF EMPLOYMENT AUTHORIZATION

Reverification is required to update expiring employment authorization documents for employees who are aliens authorized to work for a specific period only or for those being rehired within three years of their original hire date (8 C.F.R. § 274a.2(b)(1)(vi) (2011)).

Section 3 of the Form I-9 is used by the employer to:

- Reverify the employee's employment authorization after:
 - seeing updated documents with a new expiration date before the existing employment authorization expires; or
 - rehiring the employee.
- Record the employer's signed verification of its reverification.

Employers may elect whether or not to photocopy documents submitted by employees for the Form I-9 process. Whichever they choose must be applied consistently.

FORM I-9, SECTION 3 ERROR	CORRECTABLE IN AN EMPLOYER SELF-AUDIT?	ICE FINDING IN AN AUDIT	PENALTY PROVISION
The employer failing to provide the date of rehire.	Yes.	Technical.	See below <i>Civil Penalties</i> .
The employer failing to review and verify proper identity and employment authorization documents.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employer omitting the document title, identification number(s) or expiration date(s) of required documents.	Yes.	Substantive, unless a legible copy of the document(s) is retained with the Form I-9 and presented at an ICE Form I-9 audit. Technical, if a legible copy of the document(s) is retained with the Form I-9 and presented at an ICE Form I-9 audit.	See below <i>Civil Penalties</i> .
The employer not signing Section 3 where required.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employer failing to date Section 3.	Yes.	Substantive.	See below <i>Civil Penalties</i> .
The employer completing employment authorization reverification after expiration of prior work authorization.	No.	Substantive.	See below <i>Civil Penalties</i> .
The employer completing Section 3 when not required, for example, when: <ul style="list-style-type: none"> ■ A US passport presented as a List A document nears expiration. ■ A green card presented by an LPR nears expiration. ■ An asylee's work authorization nears expiration. 	Yes.	Not a violation in an ICE Form I-9 audit, but may be a violation of IRCA's anti-discrimination provisions.	For information on the possible penalties for violations of IRCA's anti-discrimination provisions, search Discrimination: Overview on our website.

PENALTIES FOR IRCA VIOLATIONS

Employers that violate IRCA may be subject to civil penalties, injunctive relief, indemnity bond penalties and criminal penalties.

>> For more information on the financial and criminal sanctions for IRCA violations, search [Demonstrating the Right to Work in the United States](#) on our website.

CIVIL PENALTIES

VIOLATION	PENALTY
Knowingly hiring or continuing employment of an unauthorized worker under 8 U.S.C. § 1324a(a)(1)(A) and (a)(2) (2010) (see above <i>Knowing Violations</i>).	Includes both a: <ul style="list-style-type: none"> ■ Cease and desist order. ■ Fine of: <ul style="list-style-type: none"> • \$375 to \$3,200 for each unauthorized worker, for a first offense; • \$3,200 to \$6,500 for each unauthorized worker, for a second offense; and • \$5,300 to \$16,000 for each unauthorized worker, for a third and any subsequent offenses. (8 C.F.R. § 274a.10(b)(1) (2011).)
Failing to complete employment eligibility verification requirements under 8 U.S.C. § 1324a(a)(1)(B) (2010). Employers may be fined for substantive and uncorrected technical paperwork violations (see above <i>Paperwork Violations</i>).	A fine of between \$110 and \$1,100 for each violation. Factors used to increase or decrease the penalty are: <ul style="list-style-type: none"> ■ The employer's: <ul style="list-style-type: none"> • size; • good faith; and • history of previous violations. ■ The seriousness of the violation. ■ Whether the violation related to an unauthorized worker. (8 C.F.R. § 274a.10(b)(2) (2011).)

INJUNCTIVE RELIEF

VIOLATION	PENALTY
Engaging in a pattern or practice of knowingly hiring or continuing the employment of unauthorized workers under 8 U.S.C. § 1324a(a)(1)(A) and (a)(2) (2010) (see above <i>Knowing Violations</i>).	The US Attorney General (or any officials operating on behalf of the US Attorney General) may bring a civil action in the appropriate US District Court for relief, including: <ul style="list-style-type: none"> ■ A permanent or temporary injunction. ■ A restraining order. ■ Any other order deemed necessary by the US Attorney General against a person or entity. (8 C.F.R. § 274a.10(c) (2011).)

INDEMNITY BOND PENALTIES

VIOLATION	PENALTY
Requiring indemnity bonds as described in 8 C.F.R. § 274a.8(a) (2011) (see above <i>Indemnity Bond Violations</i>).	Includes both: <ul style="list-style-type: none"> ■ A fine of \$1,100 for each violation. ■ An administrative order requiring return of the indemnity bond. (8 C.F.R. § 274a.8(b) (2011).)

CRIMINAL PENALTIES

VIOLATION	PENALTY
Engaging in a pattern or practice of knowingly hiring or continuing the employment of unauthorized workers under 8 U.S.C. § 1324a(a)(1)(A) and (a)(2) (2010) (see above <i>Knowing Violations</i>).	Includes either or both: <ul style="list-style-type: none"> ■ A fine of up to \$3,000 for each unauthorized worker. ■ Up to six months imprisonment. (8 C.F.R. § 247a.10(a) (2011).)

>> For information on other civil and criminal statutes that may be used by ICE in conducting worksite enforcement, search [Government Audits of I-9 Forms](#) on our website.