Insights: Alerts

Reclassification of Form I-9 Violations from Procedural to Substantive: Increased Penalty Risk for Employers

April 15, 2026

Written by **Samera S. Ludwig**

Under the Immigration Reform and Control Act of 1986, all employers are required to verify the identity and employment eligibility of all employees by completing the Employment Eligibility Verification Form I-9 ("Form I-9") for each employee. If employers do not comply or incorrectly complete the Form I-9, they become subject to fines that can add up to potentially hundreds of thousands of dollars.

Immigration and Customs Enforcement ("ICE") classifies Form I-9 errors as either substantive or technical. In the event of an ICE audit, technical errors can be fixed so that employers can avoid fines as long as the errors are corrected. Substantive errors, however, are not correctable and will result in fines.

Signaling a continued trend of increased workplace enforcement, on March 16, 2026, ICE issued new rules that significantly raised the threat of penalties for employers. In an updated fact sheet, ICE reclassified several violations previously deemed technical to substantive.

Examples of errors that were classified as technical but now are substantive include:

- Failure to date Section 1
- Missing the date of birth in Section 1
- Missing the date of hire in Section 2
- Missing the name and title of employer representative in Section 2
- Failure to date Section 2
- If utilizing remote verification, failure to check the alternative procedure box
- Using the Spanish version of Form I-9 outside of Puerto Rico
- Failure to record correctly List A, B and C data in Section 2
- Failure to participate in E-Verify when using remote verification procedure
- Failure to have adequate audit trails and electronic signature protocols when using electronic Form I-9

What does this mean? Employers cannot avoid fines for these types of errors because they are no longer considered technical violations. Without an opportunity to cure, mistakes like these will increase fines. Because ICE assesses fines per-form and per-violation, for employers with a large workforce, the cumulative exposure could be substantial. Currently, fines per violation range from $288 to $2,861 ***per violation.***

What should employers do? To minimize risk, employers should ensure that they have robust compliance practices and should conduct internal Form I-9 audits on an annual basis. If employers are using remote verification, confirm proper enrollment in E-Verify. Also ensure full compliance with federal requirements if electronic Form I-9s are used.

Contact us with any compliance concerns or to request an internal audit.

Related People

Samera S. Ludwig

t 312.628.7189

sludwig@ktslaw.com