



I-9, E-Verify, and ICE: Workforce Verification, Compliance, and Raids - Issues for the Food Industry



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ICE Audits and Internal I-9 Audits



Employment Eligibility Verification		USCIS Form I-9 OMB No.1615-0047 Expires 08/31/2026	
Department of Homeland Security U.S. Citizenship and Immigration Services			
START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the Instructions.			
ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in Section 1, or specify which acceptable documentation employees must present for Section 2 or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.			
Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the first day of employment, but not before accepting a job offer.			
Last Name (Family Name)		First Name (Given Name)	
Middle Initial (if any)		Other Last Names Used (if any)	
Address (Street Number and Name)		Apt. Number (if any)	City or Town
State		ZIP Code	
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number	Employee's Email Address	
Employee's Telephone Number			
I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.			
Check one of the following boxes to attest to your citizenship or immigration status. (See page 2 and 3 of the instructions.):			
<input type="checkbox"/> 1. A citizen of the United States			
<input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)			
<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)			
<input type="checkbox"/> 4. A noncitizen (other than item Numbers 2. and 3. above) authorized to work until (exp. date, if any)			
If you check item Number 4., enter one of these:			
USCIS A-Number		OR	Form I-94 Admission Number
		OR	Foreign Passport Number and Country of Issuance
Signature of Employee		Today's Date (mm/dd/yyyy)	
If a preparer and/or translator assisted you in completing Section 1, that person MUST complete the Preparer and/or Translator Certification on Page 3.			
Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box: see Instructions.			
List A		OR	List B AND List C
Document Title 1			
Issuing Authority			
Document Number (if any)			
Expiration Date (if any)			
Document Title 2 (if any)			
Issuing Authority			
Document Number (if any)			
Expiration Date (if any)			
Document Title 3 (if any)			
Issuing Authority			
Document Number (if any)			
Expiration Date (if any)			
Additional Information			
<input type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.			
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.			
Last Name, First Name and Title of Employer or Authorized Representative		Signature of Employer or Authorized Representative	
Employer's Business or Organization Name		Employer's Business or Organization Address, City or Town, State, ZIP Code	
First Day of Employment (mm/dd/yyyy)		Today's Date (mm/dd/yyyy)	

For reverification or rehire, complete **Supplement B, Reverification and Rehire** on Page 4.

Form I-9 Edition: 08/01/23 Page 1 of 4

ICE I-9 Audits

- An I-9 audit (Notice of Inspection) may arrive by mail or hand delivered by an ICE officer
- The company will have 3 days to produce the requested I-9s and other documents
- Do not waive the 3 days – take the time to prepare the submission with legal counsel
- Extensions may be requested though are not often given for more than a few days
- Arrange with requesting officer where to produce the documents – either onsite at the workplace, via hand delivery to the officer or electronic submission
- If onsite inspection is required, provide the officer a place to review the documents that is separate from major areas of operations or other documents/items that could lead to further investigations

Penalties



- Paperwork violation fines now range between \$288 to \$2,861 per violation
- Knowingly hiring or employing unauthorized workers have fines ranging from \$716 – \$5,724 per employee for the first violation.
- Second- and third-violation of knowingly hiring/employing range between \$5,724 up to \$28,619 per employee.
- Arrests and criminal convictions for knowingly hiring or employing unauthorized workers are on the rise as well.

Form I-9 Resources

It is unlawful for employers to *knowingly* hire or continue employing individuals who are not authorized to work in the United States.

I-9 M-274 Manual:

<https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>

USCIS I-9 Central:

<https://www.uscis.gov/i-9-central>



Form I-9 Basic Requirements

- For all Active Employees hired after November 6, 1986
- Section 1 - completed by employee no later than start date of employment.
- Section 2 - completed by employer by end of third business day after employee starts work.
- May complete form prior to start date if offer of employment is made and accepted.
- Use Form I-9 with revision date 8/1/2023 for new hires and reverifications
 - The previous version, dated "10/21/2019," was only valid until October 31, 2023.

Self-Audit – Getting Started

- Generate a list of all current employees and terminated employees for the last 3 years.
 - Include name, date of hire, date of rehire, date of termination and distinguishing fact (SSN or DOB).
- Pull I-9 forms for all current employees first.
- Make sure that you have an I-9 form for each employee on the list.
- Make a note on the list if an I-9 form is missing for a particular employee.
- For current employees with missing I-9s, complete new I-9 on current version of the Form I-9 and current dates.
- Run E-Verify Report to find any current employees with “Final Non-confirmations” who are still working.

Self-Audits - Continued

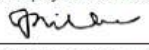
- Correct errors, as allowed, on each form.
- Section 1 – **Employee** makes corrections.
- Section 2 – **Employer** makes corrections.
- Strike a line through errors – do not use White Out or Liquid Paper. Must be **transparent. Do NOT backdate.**
- All corrections should be initialed/name written, dated, and include the words “Per Self Audit” by the internal company I-9 auditor
- Electronic system should have audit trail for corrections

Most Common I-9 Mistakes

- Section 1 – Work status box not checked.
- Section 1 – DOB and today's date interchanged.
- Section 2 – Start date missing.
- Section 2 – Issuing authority missing for document.
- Section 2 – More documents requested/listed than required.
- Supplement B – not completed in timely manner before work authorization expires

Example of Audited I-9 with Corrections

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign Section 2 within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see instructions.

List A		OR	List B	AND	List C
Document Title 1	EAD Card		Driver's License		Social Security Card
Issuing Authority	USCIS		State of Maryland		SSA
Document Number (if any)	YSC1690050023		DL25066852		265-74-5255
Expiration Date (if any)	12/01/2023		12/01/2026		N/A
Additional Information					
Document Title 2 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
Document Title 3 (if any)					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
<input checked="" type="checkbox"/> Check here if you used an alternative procedure authorized by DHS to examine documents.					
Certification: I attest, under penalty of perjury, that (1) I have examined the documentation presented by the above-named employee, (2) the above-listed documentation appears to be genuine and to relate to the employee named, and (3) to the best of my knowledge, the employee is authorized to work in the United States.					First Day of Employment (mm/dd/yyyy): 08/17/2023
Last Name, First Name and Title of Employer or Authorized Representative Johnson, Michael - VP Human Resources			Signature of Employer or Authorized Representative 		Today's Date (mm/dd/yyyy) 08/16/2023
Employer's Business or Organization Name TM Engineering			Employer's Business or Organization Address, City or Town, State, ZIP Code 1000 Larimer Street, Denver, CO 80202		

For reverification or rehire, complete [Supplement B, Reverification and Rehire](#) on Page 4.

Form I-9, Edition 08/01/23 Page 1 of 4

Per Self
Audit MJ
08/17/2023

What is E-Verify?



What is E-Verify?



- Free web-based service that is fast and easy to use
- Electronically verifies the employment eligibility of:
 - Newly hired employees
 - Existing employees assigned to work on a qualifying federal contract
- Partnership between the U.S. Department of Homeland Security (DHS) and the Social Security Administration (SSA)



Your Trusted
Verification
Partner



Confirm
with
Confidence



Improving Efficiency
to Meet Your
Changing Needs

E-Verify General Information

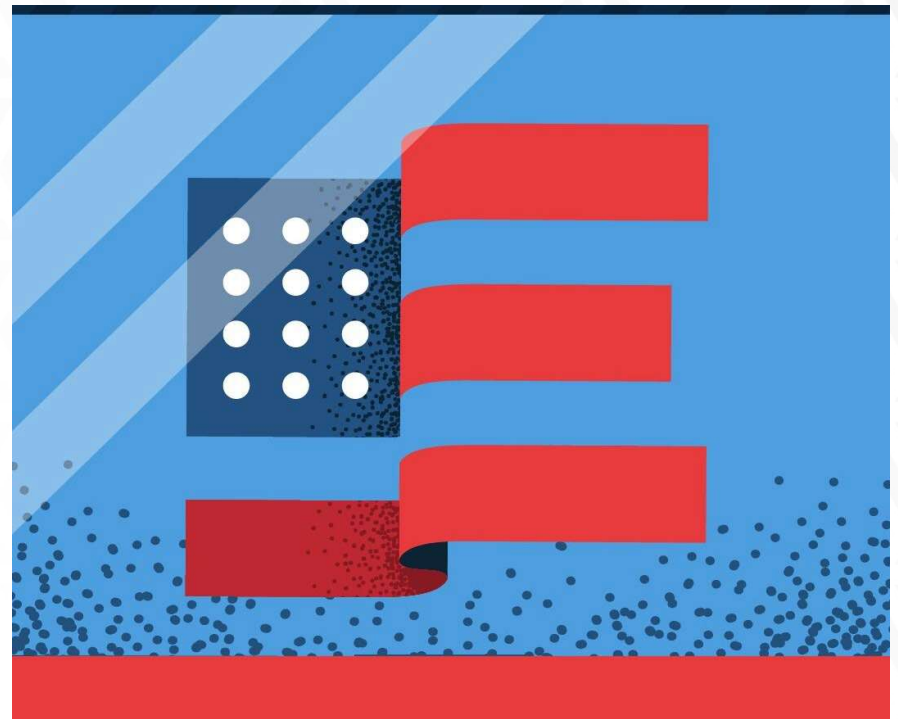
- Many states require E-Verify
 - » Required of employers doing business in the state or having employees in the state: Alabama, Arizona, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Utah
- Still voluntary in states that do not require E-Verify
- Benefits: STEM OPT Employment, assurances to work authorized population, increased availability to federal contracts
- Negatives: Potential narrowing of candidate pool and additional administrative tasks/training
- Must complete within 3 business days of employment start date
- Must include copies of work authorization documents (front/back)
- Penalties for non-compliance: fines, debarment, license revocation, bad publicity

What E-Verify Is NOT

- Supplements, does not replace Form I-9
 - Matches I-9 data with other government databases
- Does not confirm an individual's immigration status, and must not be used for prescreening purposes
 - Should not reverify employees hired before Memorandum of Understanding ("MOU") was signed or to reverify temporary employees
- Cannot overcome all ID fraud
- Does not eliminate worksite enforcement audits
 - Does, however, provide protection from "knowingly hire" violations

E-Verify Goals

- **Reduce** unauthorized employment
- **Minimize** verification-related discrimination
- Be **quick and non-burdensome** to employers
- **Protect** civil liberties and employee privacy



Why Enroll in E-Verify?

- Easy integration into onboarding process
- State law, local law, government contracts
 - Some laws require it
 - Certain federal contracts require it
- Industry-specific concerns
 - Regulation allowing OPT extensions for graduates in STEM fields (science, technology, engineering, or mathematics)
 - 2 additional years of employment for foreign students on F-1 visas
- Reduces change of SSN no-match
- Safe harbor for good faith reliance on result
- ***New alternative remote verification process***



E-Verify Impact on Form I-9

- SSN becomes mandatory
- List B documents must have a photograph
- Copies of supporting documents must be maintained
- Specific data from Form I-9 must be entered into the E-Verify system

Enrollment vs. Registration

ENROLLMENT

Who	Enrollment Point of Contact enrolls companies in E-Verify to participate in the program.
How	Visit the E-Verify enrollment website at https://E-Verify.uscis.gov/enroll
Why	Employers enroll to use E-Verify to confirm employment eligibility of employees

REGISTRATION

Program administrators register new users in E-Verify who are then able to create cases.

After completing the E-Verify tutorial and passing the knowledge test, program administrators may register general users and additional program administrators.

Enrolled employers register users to create cases in E-Verify. There is no limit on the number of users an enrolled employer can register.

Information Needed for Enrollment

All Companies:

- Company legal name
- Employer identification number (also called a Federal Tax ID Number)
- Primary physical address from which your company will access E-Verify
- Mailing address (if different from the physical address)
- Hiring sites that will participate in E-Verify in each state
- Total number of current employees
- Your company's North American Industry Classification System (NAICS) code
- Contact information (name, phone number, email addresses) for your company's Memorandum of Understanding (MOU) Signatory and Program Administrator
- Internet, printer, Adobe Acrobat Reader software

Federal Contractors Subject to the FAR E-Verify Clause:

- Unique Entity Identifier (UEI)

12 Step Enrollment Process

- Set up the Enrollment Point of Contact account
- Determine your account access
- Select your Employer category
- Enter your company information
- Enter your company addresses
- Provide hiring site information
- Add E-Verify users and Memorandum of Understanding (MOU) signatory
- Review the information you entered
- Review the MOU
- Agree to the Terms of Use
- Submit enrollment
- Save or print your electronically signed MOU

E-Verify Common Mistakes

- If offered to one, then must be offered to all employees at that company site
 - DO NOT pick and choose whom to run through E-Verify
- DO NOT run existing employees through E-Verify
 - Unless required by law
- DO ensure that document copies are retained for the duration of an individual's employment and for either three years after the date of hire or one year after the termination date, whichever is later, consistent with pre-existing I-9 rules
- DO NOT proactively request documents to audit I-9s

Proceed with Caution

- Use of resources: learn and stay up-to-date
- Impact on I-9
 - » SSN becomes mandatory
 - » List B documents must have a photograph
 - » Copies of supporting documents must be maintained
- False positives and false negatives
- Privacy concerns
- Reliance on technology
- Government shutdowns



Worksite Investigations



U.S. Immigration
and Customs
Enforcement




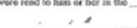
Why Would ICE Be At The Worksite? Raids vs. Audits

- ICE may come to the worksite to:
 - Start an **I-9 audit** (Document will be called “Notice of Inspection”);
 - **Workplace raid** – **must have a judicial warrant**;
 - Detain a specific person – **must have a judicial warrant**.

What protections are available?

- **Employers and employees have rights under law, regardless of status**
 - 4th Amendment – protects people against unreasonable search and seizure of their home, person and belongings
 - 5th Amendment – right to remain silent
- **Worksite Raids** must be accompanied by a Judicial Warrant signed by a judge and give a specific scope of search and seizure.
- **Home Searches** must also be accompanied by a Judicial Warrant
- **Warrants**
 - An administrative warrant authorizes an ICE agent to make an arrest or seizure, but not to search
 - An ICE warrant does not authorize an ICE agent to enter a private space or home without consent
 - An ICE warrant does not provide probable cause of a crime or meet Fourth Amendment requirements for arrest

Administrative Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY		Warrant for Arrest of Alien	
		File No. _____	
		Date: _____	
To: Any Immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations			
I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:			
<input checked="" type="checkbox"/> the execution of a charging document to initiate removal proceedings against the subject;			
<input type="checkbox"/> the pendency of ongoing removal proceedings against the subject;			
<input type="checkbox"/> the failure to establish admissibility subsequent to deferred inspection;			
<input type="checkbox"/> biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or			
<input type="checkbox"/> statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.			
YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.			
		 (Signature of Authorized Investigation Officer)	
		- 2000	
		(Printed Name and Title of Authorized Investigation Officer)	
Certificate of Service			
I hereby certify that the Warrant for Arrest of Alien was served by me at _____, On/Under _____ (Location)			
on _____ (Name of Alien) on _____ (Date of Service), and the contents of this			
notice were read to him or her in the _____ language.			
(Language)			
B-1 DO		 Name and Signature of Officer	
		Name or Number of Immigrant (if applicable)	

ISSUED BY ICE

SIGNED BY AN ICE OFFICER

Resources

Know Your Rights

- <https://www.aclusocal.org/en/know-your-rights>

Know your rights when stopped

- <https://www.aclusocal.org/en/know-your-rights/when-stopped-officer>
- <https://www.aclusocal.org/es/know-your-rights/si-lo-detiene-un-oficial>

Know your rights if questioned by police, FBI, customs agents or immigration officers

- <https://www.aclusocal.org/en/know-your-rights/if-questioned-police-fbi-customs-agents-or-immigration-officers>
- <https://www.aclusocal.org/es/know-your-rights/que-debe-hacer-si-la-policia-un-agente-de-immigracion-o-el-fbi-lo-detiene>

Know your rights when stopped by federal agents

- <https://www.aclusocal.org/en/know-your-rights/when-stopped-federal-agents>
- <https://www.aclusocal.org/es/know-your-rights/si-lo-detiene-un-agente-federal>

Best Practices



U.S. Immigration
and Customs
Enforcement

Preparation

Immigration Point Person

- Assign a staff member as the primary contact for all DHS/ICE/CBP correspondence.
- Ensure all employees are aware of who this person is and how to contact them.

Employee Awareness and Communication

- Train employees to immediately notify the Immigration Point Person in case of any contact from DHS/ICE/CBP.
- Provide clear instructions on workplace rights and responsibilities in case of a raid.

Workplace Signage and Access Control

- Ensure proper signage is displayed on all private and non-public workspaces.
- Restrict unauthorized access to non-public areas unless legally required.

ICE or CBP Arrival

Handling ICE or CBP Agent Arrival

- Ask agents if they have a warrant.
- If no warrant is presented, deny access to employees, documents, and non-public areas.
- If a warrant is presented, carefully review its details.

Validating the Warrant

- Confirm it is a judicial warrant, issued by a federal court and signed by a judge.
- If it is an administrative warrant (issued by DHS/ICE/CBP), it does not grant access to non-public areas.

Managing the Search and Seizure Process

- Cooperate within the limits of the warrant – stay calm.
- Do not interfere with officers' search and seizure within the scope of the warrant.
- Record details of the search, including items taken and persons spoken to or detained.

Documenting the Activity

Documentation and Evidence Collection

- Keep detailed records of all interactions, searches, and seizures.
- Request a copy of the warrant and any inventory of seized items.

Protecting Business-Critical and Confidential Documents

- If agents attempt to seize confidential or critical business documents, request an accommodation to retain or copy them.
- Consult legal counsel immediately for guidance.

Post-Raid Review and Next Steps

- Conduct a debriefing with key personnel to document the event.
- Consult an immigration attorney to assess the situation and respond appropriately.
- Provide necessary support to affected employees.
- Revise and update this action plan based on new developments or legal requirements.



Fisher Phillips Employers' Rapid Response Team for DHS Raids



Fisher Phillips Employers' Rapid Response Team and Hotline

24/7 Emergency Hotline:

In the event of an active ICE enforcement action, call **7781** for immediate assistance.


DHSRaid@fisherphillips.com



Employers' Rapid Response Website

Complimentary checklist
available on the
[Employers' Rapid
Response webpage](#)

Employer DHS/ICE Raid
Preparedness Action Plan Checklist



1. Immigration Point Person

☐ Assign a staff member as the primary contact for all DHS/ICE/CBP correspondence.

☐ Ensure all employees are aware of who this person is and how to contact them.

☐ Immigration Point Person:

Name:

Contact Info:

2. Employee Awareness and Communication

☐ Train employees to immediately notify the Immigration Point Person in case of any contact from DHS/ICE/CBP.

☐ Provide clear instructions on workplace rights and responsibilities in case of a raid.

☐ Inform employees that they should not communicate with DHS/ICE/CBP on the Company's behalf.

3. Workplace Signage and Access Control

☐ Ensure proper signage is displayed on all private and non-public workspaces.

☐ Restrict unauthorized access to non-public areas unless legally required.

4. Handling ICE or CBP Agent Arrival

☐ Step 1: Ask agents if they have a warrant.

☐ Step 2: If no warrant is presented, deny access to employees, documents, and non-public areas.

☐ Step 3: If a warrant is presented, carefully review its details.

5. Validating the Warrant

☐ Confirm it is a **judicial warrant**, issued by a federal court and signed by a judge.

☐ If it is an administrative warrant (issued by DHS/ICE/CBP), it does not grant access to non-public areas.

6. Managing the Search and Seizure Process

☐ Cooperate within the limits of the warrant.

☐ Do not interfere with officers' search and seizure within the scope of the warrant.

☐ Record details of the search, including items taken and persons spoken to or detained.

7. Employee Rights and Conduct

☐ Inform employees that it is their **choice whether** to answer questions from ICE agents.

☐ Inform employees that it is their **choice whether** to remain silent and request legal representation.

8. Documentation and Evidence Collection

☐ Keep detailed records of all interactions, searches, and seizures.

☐ Request a copy of the warrant and any inventory of seized items.

9. Handling Arrested or Detained Employees

☐ Gather details on where detained employees are being taken.

☐ Notify legal counsel or an immigration attorney for assistance.

10. Protecting Business-Critical and Confidential Documents

☐ If agents attempt to seize confidential or critical business documents, request an accommodation to retain or copy them.

☐ Consult legal counsel immediately for guidance.

11. Post-Raid Review and Next Steps

☐ Conduct a debriefing with key personnel to document the event.

☐ Consult an immigration attorney to assess the situation and respond appropriately.

☐ Coordinate with crisis communications team to manage post-raid internal and external communications and to limit risk and minimize exposure.


☐ Provide necessary support to affected employees.

☐ Revise and update this action plan based on new developments or legal requirements.

Disclaimer:

This material is provided for informational purposes only. It is not intended to constitute legal advice, nor does it create a client-lawyer relationship between Fisher & Phillips LLP and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material.

With almost 400 attorneys in 41 offices across the United States and Mexico, Fisher Phillips is an international labor and employment firm providing practical business solutions for employers' workplace legal problems. We regularly advise and counsel clients on issues surrounding wage and hour, employment discrimination and harassment, litigation, workplace safety, immigration, trade secrets and non-competes, and more.



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Employers' Rapid Response Toolkit for DHS/ICE Raids

- Available for purchase through fpSolutions
- **\$1,150 per toolkit**
 - Discounted price of \$1,000 for packages purchased in May
- Code: **FPIMM150**



THANK YOU

For Joining Fisher Phillips



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jim@fisherphillips.com

