

Form I-9: Two Weeks/Two Important Updates

Legal Alert
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Garvey Schubert Barer Legal Update, February 3, 2011.

Employers: Are You in Compliance with Form I-9 Requirements?

Form I-9 compliance continues to receive renewed attention. The new year began with the publication of a revised Handbook for Employers (known by many by its number, the "M-274"). The publication was followed within weeks by the announcement of the opening of an "enforcement compliance center" staffed by auditors to support local Field Office audits of the Form I-9. Taken together, they foreshadow an increase in the likelihood that your business or organization may become the subject of a government audit and the fines that almost invariably go along with it.

The updated M-274 changes some procedures and provides many new specific examples of how to comply with Form I-9 documentation. It is a "must see" for anyone with any responsibility for Form I-9 compliance, no matter how well they think they know the Form I-9. We suggest that you bookmark <http://www.uscis.gov/files/form/m-274.pdf> and refer to it often.

Audits on the Rise

Fines collected by the government have greatly increased in volume and amount, due to the switch from raids on "egregious violators," to audits of wide range of "average" employers. Audits have proven to be a low-cost/high yield approach for the government, and will only increase in number. Since September 2008, the government has conducted more than 3,700 audits netting millions in fines and jail for many employers.

The government's focus on audits makes it more likely your records will be audited. With only a 3 calendar-day notice required, it is more important than ever to be ready for a

government audit and the difficulties that it brings.

Garvey Schubert Barer recommends that all employers consider conducting a carefully-structured self-audit, with ongoing follow-up as a means of reducing current and potential liability. The government has increased its educational efforts to inform employers about how to comply with Form I-9 requirements, and has also shown an increased willingness to fine employers for failure to fully comply. The push on education increases the likelihood that, in an audit, they will no longer be focused on improving systems for the employer, but on collecting fines for the government. If you would like assistance in completing a self-audit and identifying potential problem areas, please contact our immigration and employment team.

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