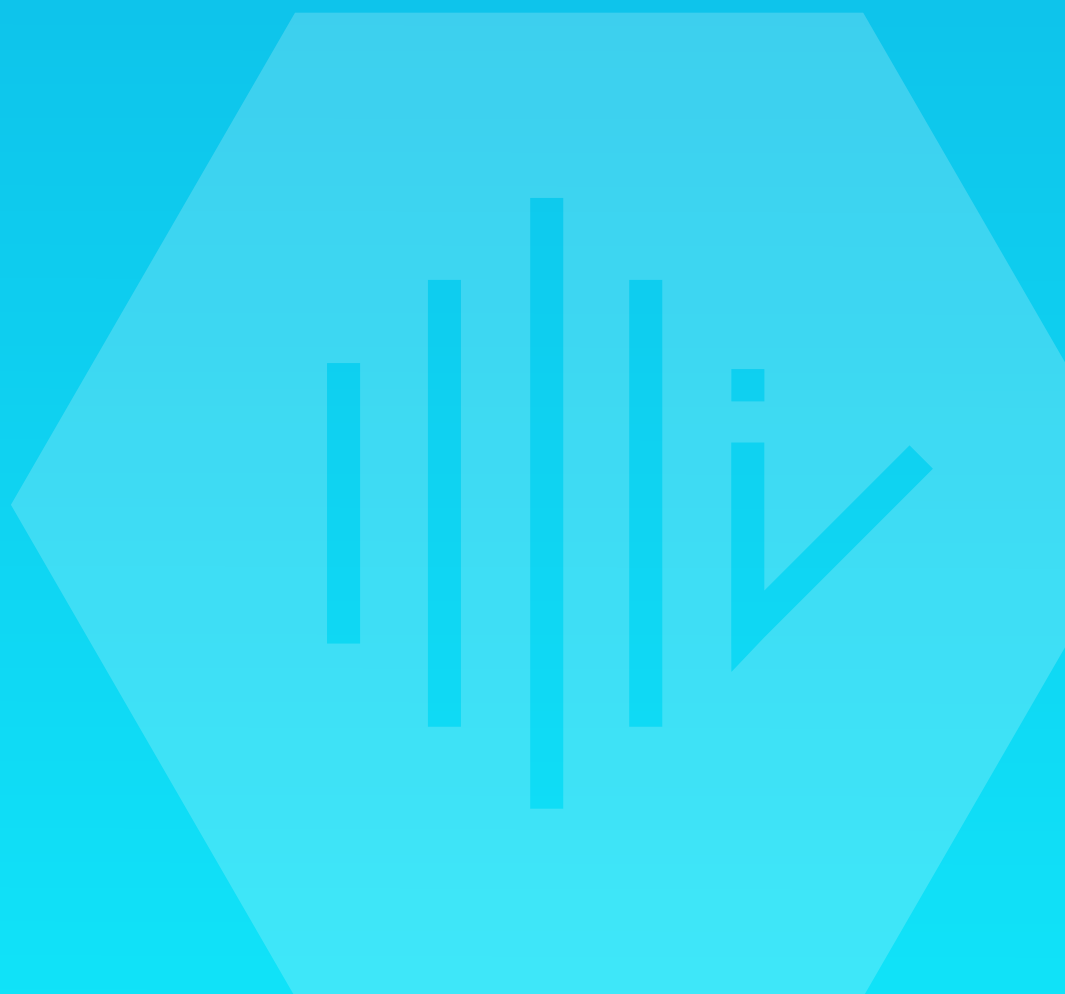


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5 Steps to Prepare for the (Inevitable) I-9 Audit



Introduction

ICE has issued an unprecedented number of I-9 audits over the last three weeks, totaling 3,282 NOI's to employers across the country. The recent wave of audits target hospitality, agriculture, food processing, landscaping, and construction industries. It is anticipated that thousands more audits will be issued in the coming weeks.

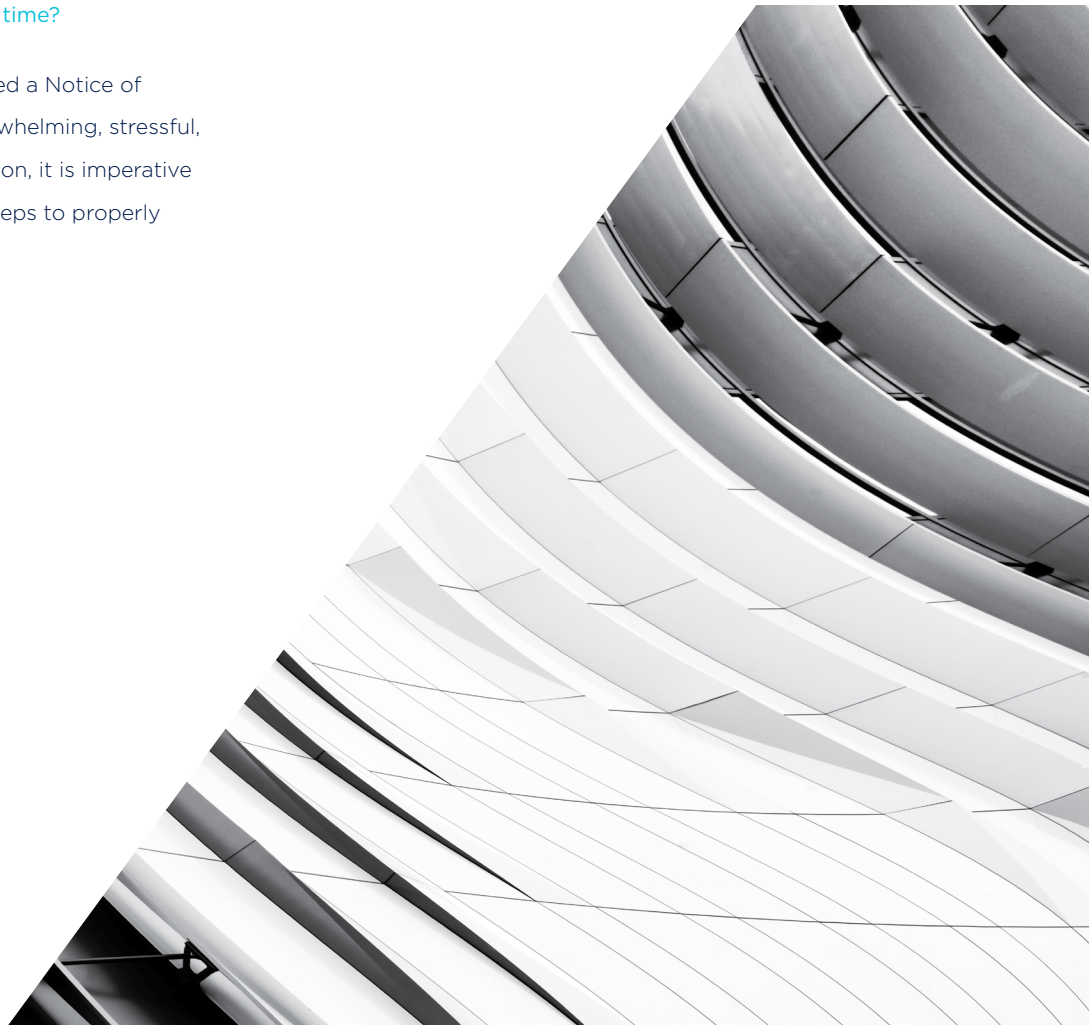
If you are like many HR executives, the possibility of an ICE audit sparks many questions and concerns:

- Are our Form I-9s ready for a federal audit?
- What will ICE find?
- How large could the fines be?
- How will this reflect on me and my team?
- How should we prepare ahead of time?

The unfortunate event of being served a Notice of Inspection (NOI) by ICE can be overwhelming, stressful, and lead to costly fines. For this reason, it is imperative that your team take the necessary steps to properly prepare for a potential ICE audit.

Why now?

During an ICE Form I-9 inspection, an organization is granted three days to pull together a proper response package. This 72-hour window leaves little time for preparation and strategic planning. It is vital that your team take necessary steps today to ensure that you are consistently reviewed and updated before you get audited. The time to build a parachute is before you need it. Similarly, you should lay the groundwork for an I-9 audit before you've been served with the Notice of Inspection (NOI).



Step 1: Communicate your chain of command

A Notice of inspection (NOI) can be served to any one of your company locations, including office, retail, or warehouse sites. It is critical that you establish procedures to ensure that upon receiving an NOI, each member of your team knows the exact next steps to take. Because of the strict 72-hour time-frame, it is essential that you define exactly who in your organization should be notified and what should happen if they can't be reached.

It is important to note that the NOI may be presented in person by an ICE or federal representative, or sent via certified mail. In the event that an NOI is delivered by certified mail, your staff may not feel the need for immediate action. Properly educate your staff to ensure an official NOI is not misplaced or mistaken for ordinary mail.

Once an NOI is received, we suggest that staff take immediate action to notify the highest-level person at the facility. Again, due to the extreme time sensitivity of an NOI, it is highly advised that a manager is informed in-person, not via voicemail or email. **The 72-hour clock begins as soon as the NOI is received.**

Once the highest-level manager at the facility is informed, he or she must contact the appropriate individuals at your headquarter office. Typically, this will include your top HR executive, legal counsel, and any individual who is responsible for your Form I-9 process or management system.

Finally, following the audit, your team should clearly document and communicate the process and learnings to your organization. The I-9 inspection process will be a tremendous learning opportunity for your entire company and future employees.

Gut check:

A clear policy and chain of command should be outlined to clarify logistical questions: Who should be notified? What do we do if they can't be reached? For example, the management team at the office being audited may be responsible for alerting the appropriate people in corporate HR, who in turn are responsible for notifying legal counsel. Think through these possible scenarios and make provisions for them in your policy.



Step 2: Identify your legal counsel

We strongly suggest that your organization engage experienced counsel to represent you during an ICE audit. An experienced attorney will be in the best position to communicate your rights and advocate for those rights throughout the I-9 audit process. If you do not have in-house counsel who will be able to represent you during the audit, we recommend that your team secure appropriate external counsel in advance.

An experienced Audit Support Team will be able to properly respond to the NOI and support you throughout the audit process, mitigating the risk of potential fines.



Step 3: Define your process for record access

During an I-9 audit, ICE often requires an organization to produce records other than Form I-9s that allow the federal agency to corroborate the I-9s. The additional requested records typically include:

- Employee Roster
- Payroll Reports
- Tax Statements
- Articles of Incorporation
- Business License(s)

Make sure you know ahead of time where this information resides, and who can produce the requested reports from your various systems and files.

It is to your advantage to respond to an NOI as efficiently as possible. Therefore, the earlier in the process you can get the information you need, the more time you will have to identify issues and avoid potential fines.

Gut check:

Here are several examples of record process and storage questions we suggest you ask your team prior to a Form I-9 audit:

1. **Who in our organization knows how to pull a report for a particular work location** showing both active and terminated employees in the past three years along with hire date, termination date, SSN, and birth date?
2. Who knows how to **pull payroll reports by location and time-frame**? Or will we have to involve our payroll vendor? If our payroll vendor needs to be involved, what is the process to immediately contact with the right person? How long will it take them to pull a report?
3. Who has access to our **tax statements**?
4. Where are our **articles of incorporation and business license(s) stored**?



Step 4: Understand how your electronic I-9 vendor will support you

Do you currently use an electronic I-9 management system? Like many compliance-focused companies, your organization may choose to use an electronic I-9 system to manage your ongoing Form I-9 and E-Verify processes. But not all electronic platforms are the same. Therefore, you will want to fully understand the support you should expect to receive from your vendor well before the event of an ICE audit. Ask your electronic I-9 vendor to clearly outline the assistance they will provide from their Audit Support Team in the event of an ICE audit.

- Will your team have a single point of contact?
- What is the process for contacting this person and getting immediate attention?
- What is the process your team will use to request the records needed by ICE?
- What is your vendor's turnaround commitment for producing the requested I-9 records? (It will be crucial that you receive the records within the strict 72-hour time period, but the earlier you receive the records from your vendor, the more time your team will have to identify and mitigate potential issues.)

The Notice of Inspection will typically require you to provide information regarding your electronic I-9 system to ensure it properly meets the requirements for audit trails, electronic signatures and more. Ask your I-9 vendor for a copy of the information they use to fulfill this typical NOI request. An experienced electronic I-9 vendor should be able to provide specific language they have previously used that has already passed ICE's review.

Here is a list of questions we recommend every company ask when vetting a new electronic I-9 management system. If you are already working with an electronic I-9 system, ask your vendor these questions now as you prepare for an audit:

- Does your solution log all system activity as required by ICE into **ICE-compliant audit trails**?
- At the time the Section 2 and Section 3 signatures are submitted, does your solution make a read-only copy of the I-9 with a **time and date stamp**?
- If an I-9 is changed, is a **new read-only copy** made upon new signature submission with a date/time stamp?
- Please outline the regulatory **requirements for electronic signatures**, and verify that your solution meets them.
- Are there customers of your I-9 system who have gone through an ICE audit? If yes, please describe the audit results for records that were created in your system.

Because ICE often asks to see the change history of every I-9, make sure you can pull a summary report from your I-9 system that shows all changes across an I-9s signing history.

Step 5: Scrub & cleanse your records

The final step to ensure that your team is fully prepared for a sudden ICE audit and your I-9s are ready for federal scrutiny is to properly cleanse your existing I-9s.

Until several years ago, the only way to cleanse I-9s was to manually detect and correct errors. This process requires significant labor hours and can be cost-prohibitive for large companies that manage tremendous numbers of paper or electronic I-9s.

Remember, paper Form I-9s are especially prone to errors. Thankfully, there are a number of more efficient tools that electronically detect and correct paper or electronic I-9s, drastically reducing the number of labor hours required for remediation of erroneous forms. Cleaning your Form I-9s is the most invaluable step to ensuring your company receives zero fines during a federal audit.



ABOUT MITRATECH

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With Mitratech's proven portfolio of end-to-end solutions, organizations worldwide are able to implement best practices and standardize processes across all lines of business to manage risk and ensure business continuity.

Mitratech serves over 1,500 organizations worldwide, including 30% of the Fortune 500 and over 500,000 users in 160 countries.

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