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EMPLOYER NEW YEAR'S RESOLUTION #1—GET YOUR I-9S IN ORDER

It's January, and we all know what that means—New Year's resolutions. While many of us will stop going to the gym by the end of the week, we're bringing you a month of employment law resolutions that we hope you keep all year long. First up: the Form I-9.

I-9s are (or should be) completed at the time of hire and then, usually, shoved in a personnel file, never to be thought of again. And, if the form was filled out perfectly, and your retention process is in order, that is sufficient. But perfection is aspirational, and all too often, errors lurk in the initial completion, required reauthorizations, and the retention schedule of these forms.

Given increased federal scrutiny of work authorization, January 2026 is the ideal time to review your I-9 processes and engage in an I-9 audit.

Why Do I Need to Do This?

For years, many employers viewed I-9 compliance as a simple and routine paperwork hurdle. However, several factors make 2026 a high-stakes year for employment eligibility:

1. **Increased ICE Enforcement:** Immigration and Customs Enforcement has significantly ramped up its workplace inspection activity. If your documents aren't in order, you could not only risk losing workers but also face significant monetary penalties.
2. **Increased Fines:** Civil penalties for I-9 violations are adjusted annually for inflation. For 2026, even simple paperwork errors (missing dates, signatures, or checked boxes) can result in fines ranging from hundreds to several thousand dollars *per form*. This potential liability snowballs quickly.

Your 2026 I-9 Audit Checklist

Conducting a self-audit—often with the assistance of legal counsel to maintain privilege and ensure accuracy—allows you to correct errors in "good faith," which can serve as a powerful mitigating factor if ICE ever serves a Notice of Inspection.

1. Retention Review

Don't keep what you don't need. While you need to have a Form I-9 for each current

employee, you are not required to keep them forever after the employee no longer works for the company. You are required to keep I-9s for former employees for the longer of (1) three years after the date of hire; and (2) one year after the date of termination. Purging forms outside this window reduces your overall exposure.

2. The Forms: Are They Filled Out Correctly?

Section 1: The Employee's Responsibility

Check that the employee completed Section 1 no later than their first day of work. Common errors include missing signatures and failure to check a status box (e.g., "A citizen of the United States").

Section 2: The Employer's Responsibility

Ensure this was completed within three business days of the hire date. Verify that the document titles, issuing authorities, and expiration dates are filled in and, if the documents were retained, match the documents presented.

Supplement B (formerly Section 3): Reverification

While Sections 1 and 2 are the focus during onboarding, Supplement B—the section used for reverification and rehires—is often where an audit reveals the most significant compliance gaps. Because this section is only filled out "as needed," many employers fail to track the specific triggers that require its completion. There are three primary scenarios when Supplement B must be filled out:

1. **Reverification:** When an employee's temporary work authorization or employment authorization document is about to expire, you must reverify their eligibility no later than the date the current authorization expires. Because reverification is solely about *work authorization*, you only need to review a List A or List C document (not a List B document). Asking for more documents than required—or asking for specific documents of your choosing—can inadvertently trigger a claim of discrimination. You do not need to reverify U.S. citizens or noncitizen nationals, nor do you typically need to reverify Lawful Permanent Residents.
2. **Rehires:** If you rehire a former employee within three years of the date their original Form I-9 was completed, you have a choice: You can either complete a brand-new Form I-9 or simply complete Supplement B on their original form.
3. **Legal Name Changes:** While not strictly mandatory under federal law, USCIS highly recommends using Supplement B to document an employee's legal name change to ensure your records match your payroll and tax filings.

3. Making Corrections

If you find an error, never use white-out and never backdate. The proper procedure is to:

- Draw a single line through the incorrect information;
- Enter the correct information;
- Initial and date the change (using the date of the correction); and
- Provide a brief explanatory memo.

For major errors, it is often best to complete a new form and staple it to the old one.

Resolution: Be Proactive, Not Reactive

The goal of a 2026 I-9 audit isn't just to fix the past—it's to protect the future. Use this audit to identify where your processes may be breaking down. Is the HR team properly trained? Are you getting alerts about work authorization expiration? Are you purging records when appropriate?

By resolving to audit your I-9s now, you are ensuring that if a Notice of Inspection arrives in your inbox this year, your response will be one of confidence, not panic.

As always, **O'Neil Cannon** is here for you. We encourage you to reach out with any labor and employment questions, concerns, or legal issues you may have, including assistance with I-9 self-audits and responses to Notices of Inspection.