

I-9 Penalties FAQ

Form I-9: Unlawful Discrimination and Employment Penalties

Penalties relating to the Form I-9 can result from violating federal discrimination laws or unlawful employment practices.

Discrimination

The anti-discrimination provision of the Immigration and Nationality Act (INA), as amended, prohibits four types of unlawful conduct:

- Unfair documentary practices
- Citizenship or immigration status discrimination in hiring, firing and recruiting
- National origin discrimination in hiring, firing, and recruiting
- Retaliation or intimidation.

The INA prohibits Employers from committing unfair documentary practices, which means discriminating against an employee when verifying their identity and employment authorization. Unfair documentary practices generally occur when employers treat individuals differently on the basis of national origin or citizenship or immigration status in the Form I-9 or E-Verify process, or any other process an employer may use to verify employment eligibility.

Penalties for Unlawful Discrimination

If an investigation reveals that an Employer engaged in unfair immigration-related employment practices under the INA a lawsuit may be filed. The charging party may also file a lawsuit. Settlements or lawsuits may result in one or more corrective steps, including:

- Hiring or reinstating, with or without back pay, an individual who was directly affected by the discrimination
- Removing a false performance review or false warning from an employee's personnel file
- Posting notices to employees about their rights and about your obligations
- Educating all personnel involved in the recruiting, hiring, and onboarding processes, about the proper procedures for verifying an individual's employment eligibility and complying with anti-discrimination laws

Documentation Penalties

The DHS is authorized to enforce the employment eligibility verification requirements. Employers who fail to properly complete, retain, and/or make available for inspections Forms I-9 may incur civil penalties.

Substantive Verification Violations	1st Offense \$234 - \$2,332	2nd Offense \$234 - \$2,332	3rd Offense + \$234 - \$2,332
0% - 9%	\$234	\$1,166	\$2,332
10% - 19%	\$583	\$1,399	\$2,332
20% - 29%	\$933	\$1,632	\$2,332
30% - 39%	\$1,283	\$1,866	\$2,332
40% - 49%	\$1,632	\$2,099	\$2,332
50% or more	\$1,982	\$2,332	\$2,332

Unlawful Employment Penalties

Employers who knowingly hired unauthorized aliens, knowingly continue to employ an unauthorized alien, or failed to comply with the employment eligibility verification requirements may be liable for the following penalties:

Knowingly Hired and Continuing to Employ Violations	1st Tier \$583 - \$4,667	2nd Tier \$4,667 - \$11,665	3rd Tier \$6,999 - \$23,331
0% – 9%	\$583	\$4,667	\$6,999
10% – 19%	\$1,213	\$6,730	\$9,099
20% – 29%	\$1,866	\$7,699	\$11,899
30% – 39%	\$2,566	\$8,701	\$14,698
40% – 49%	\$3,266	\$9,681	\$17,638
50% or more	\$4,667	\$11,665	\$23,331

The DHS will consider an employer to have **knowingly hired** an unauthorized alien if the employer uses a contract, subcontract, or exchange, which is entered into, renegotiated, or extended to obtain the labor of an alien and knows the alien is not authorized to work in the United States. Liability is also imposed when an employer uses a contract or subcontract — renegotiated or extended — to obtain the labor of an alien and knew the alien was not authorized to work in the United States.

Criminal Penalties

Criminal penalties of up to \$3,000 in fines and imprisonment for up to six months are possible when a pattern or practice of knowingly employing unauthorized workers is demonstrated. People who use fraudulent identification or employment eligibility documents or documents that were lawfully issued to another person, or those who make a false statement or attestation for purposes of satisfying the employment eligibility verification requirements may be fined, imprisoned for up to five years, or both.

Document Fraud

If a DHS investigation reveals that an individual has knowingly committed or participated in acts relating to document fraud, the DHS may take action. The DHS will issue a Notice of Intent to Fine when it intends to impose penalties and persons who receive this notice may request a hearing before an administrative law judge. If the DHS does not receive a request for a hearing within 30 days, it will impose the penalty and issue a Final Order, which is final and cannot be appealed. Individuals found by the DHS or an administrative law judge to have violated § 274C of the Immigration and Nationality Act may be ordered to:

- Cease and desist from such behavior.
- Pay a civil penalty as follows:
 - **First Offense:** Between \$452 and \$3,621 for each fraudulent document that is the subject of the violation.
 - **Subsequent Offenses:** Between \$3,621 and \$9,054 for each fraudulent document that is the subject of the violation.

Good Faith Defense

If an employer can demonstrate that it has, in good faith, complied with the Form I-9 requirements, then the employer has established a good faith defense with respect to a charge of knowingly hiring an unauthorized alien, unless the government can show that the employer had actual knowledge of the unauthorized status of the employee.

A good faith attempt to comply with the paperwork requirements of the law may be adequate notwithstanding a technical or procedural failure to comply, unless the employer has failed to correct the violation within 10 days after notice from the DHS, or the employer is engaging in a pattern or practice of violations.

For More Information

For more information on I-9 Documentation and Lists of Acceptable Documents, go to the U.S. Citizenship and Immigration Services website at www.uscis.gov.