



The Toughest 72 Hours of Your Career

With the recent increases in Form I-9 enforcement, it's more critical than ever that retailers ensure total compliance.

Brought to you by

LEXMARK



The Toughest 72 Hours of Your Career

The retail manager has become a Form I-9 processor, too. Here's what you need to know to become ICE-proof.

The holiday selling season can be brutal. For some retailers, the day begins at 6 a.m. and ends at midnight. New stock arrives daily, as do customer requests and new promotional materials. Not to mention staffing issues that often pop up, such as unexpected absences by seasonal workers. It's during these times that retail managers are most challenged. As any manager will attest: It helps to be prepared for the unexpected, especially if the "unexpected" is an I-9 audit – a surprise that affected nearly 3,000 employers in 2011.

Retail managers should be very familiar with the I-9 form – also called Employment Eligibility Verification – a one-page form used to document and confirm that a new employee is legally able to work in the U.S. It's something that many oversee daily as they prepare new hires for the retail floor. However, managers are probably less familiar with an I-9 audit, the U.S. Immigration and Customs Enforcement's (ICE) review of those forms. During an I-9 audit, ICE comes in and presents a Notice of Inspection, which is an official request to review an organization's I-9s as well as supporting documentation. Once presented, the company being audited has 72 hours to locate and assemble the original I-9s, payroll records, and other information requested, and hand all of the documentation over for review by ICE.

The I-9 audit can make the I-9 compliance process look like child's play, say experts. It takes, on average, 11 minutes to fill out the I-9 form. Employees fill out Section 1, and the employer handles Section 2, verifying and detailing the evidence of identity and authorization to work in the U.S. An I-9 audit, however, can require the full attention of a retail manager, leaving little time for customer-facing and value-added activities – not to mention everything it takes to keep a store running smoothly.

With careful planning, and by putting the right technologies in place, retailers can keep an I-9 audit from turning a happy holiday season into a blue one.

An Audit Tale

Even something as simple as putting a good data retention policy into place can minimize disruption from an audit. For example, although I-9 audits often focus on existing employees, they may sometimes include prior employees, too, says Kathleen Campbell Walker, an attorney who is former national president and general counsel for the American Immigration Lawyers Association. Retailers should make sure they are holding on to documents long enough, she says. "You need to hold on to I-9s for three years from the date of hire or one year after the date of termination, whichever comes last," she says.

And while an extended I-9 audit might add another wrinkle for managers, who then have to go looking for people who don't work for them anymore, it doesn't have to.

"If you don't have supporting documentation, the manager is going to have to chase down all those employees and get whatever information is missing," says Javier Rey, vice president of sales at LawLogix, an I-9 compliance, E-Verify and immigration case management software provider. That employee might only work part-time or might not have everything they need, so it becomes a race against the clock to correct those forms before ICE comes back. Now the manager is taking care of paperwork instead of things that produce revenue, such as employee training, inventory management and marketing. Customer service will suffer, too, since store operations don't run as smoothly and there's one less person on the selling floor.

ABOUT THE AUTHOR

Karen Bannan is a writer, editor, blogger, and moderator. She has been writing about technology for more than a decade, first for *PC Magazine* and then *eWeek*, where she covered servers, workstations, and storage. Her work has appeared in business, technology, and consumer publications including *The New York Times*, *The Wall Street Journal*, *Time Magazine*, and *BusinessWeek Online*.

The best way to avoid having to chase employees and having to refer back to digital copies is to get I-9s filled out correctly from the start. This is especially important since having I-9s with missing or incorrect data can generate fines during an audit, says Michael G. Riebau, owner of ISL Consultants, a training and consulting I-9 compliance firm. Fines and penalties for paperwork errors range anywhere from \$110 per mistake per form to up to \$935 per mistake per form.¹ And that's just for a first offense. Fines can really add up, says Riebau. You can have multiple mistakes on one form, and even small, technical errors count. In addition, since ICE can require businesses to terminate those who don't have enough documentation, there's always the threat of a reduced workforce.

After – and Before – the Fire

Retail managers should also be aware that their audit responsibilities aren't over once ICE takes the records away, according to Campbell Walker. There are some mistakes – called technical violations – that can be corrected within a 10-day period following an audit. If these mistakes are fixed, the employer is not subject to all of the fines that would normally be imposed. "You're trying to make technical corrections to reduce the exposure to penalties," she explained.

For all of these reasons, it may make sense for retailers to move to an electronic I-9 compliance solution coupled with on-site scanning via multifunction products (MFPs). With automation in place, employers can take advantage of a secure, fully automated platform that streamlines the process. "Well-designed software will reduce the number of errors down to zero because the software generally has embedded guidance to make sure the employee is not making any mistakes when filling out Section 1," explains Rey. "With Section 2 [of the I-9], the software provides a framework so the person filling it out knows exactly what to do." In other words, they won't

miss sections that must be filled out or take too much documentation, both of which can prompt fines if audited.

Software also improves the paper trail and compliance, especially when used with an MFP. When managers fill out the form electronically it can go immediately and directly to human resources. If there is a problem, someone in HR can spot it and request a fix before the employee enters the workforce. Scans of supporting documentation also assist in proofreading since that same HR representative can check for mistakes against the original.

In addition to automation, experts suggest that companies undertake their own quarterly—or at the very least yearly—audits, so they can spot and correct errors proactively. Managers may also want to request I-9 training or a refresher course. "The rule of thumb is to get knowledgeable immigration counsel to come in and do spot checks for you," suggests John Fay, LawLogix's general counsel and vice president of product development. If a company doesn't have the time or funds to hire outside help, someone in human resources can conduct the audit. "Just don't use the same people who did the original intake of the I-9, because they may make the same mistakes again," adds Fay.

Finally, managers may want to ask human resources to detail a compliance and audit process so everyone knows what to do and how to minimize mistakes.

"Companies think that the I-9 is just another form to fill out during the application process, but there should be best practices in place to ensure it will be done correctly," says Riebau. "The company should be training those who are handling I-9s and have at least two people reviewing their work. If you want to be ICE-proof and audit-ready you need to have a solid program in place." And when you do? Customers – and employees – have more reasons to be jolly. ■

¹http://www.ice.gov/doclib/foia/dro_policy_memos/formi9inspectionoverview.pdf

ABOUT LEXMARK

Lexmark International, Inc. (NYSE: LXX) provides businesses of all sizes with a broad range of printing and imaging products, software, solutions and services that help customers to print less and save more. Perceptive Software, a Lexmark company, is a leading provider of process and content management software that helps organizations fuel greater operational efficiency. In 2011, Lexmark sold products in more than 170 countries and reported more than \$4 billion in revenue.