



# Immigration Compliance Dangers in the Shared Economy

Insights

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There is no greater area of innovation than the shared economy. Companies like Uber, Lyft, AirBnB are among the leaders in technical innovation and business strategy. At the heart of the shared economy is the idea that those doing the work at companies are freelancers rather than employees.

Like many issues in the shared economy, immigration compliance was an unexpected but growing concern. U.S. immigration compliance is anchored by the Form I-9. The Form I-9 requires employers to check the work authorization of every employee hired. In the shared economy, however, the people doing the work are freelancers rather than employees. And since I-9 rules specifically exempt companies from collecting I-9 documentation from freelancers or contractors, most shared economy companies avoid this requirement.

While many companies have strong background check systems to address questions of status, the penalties for failure to ensure freelancers are authorized to work is almost non-existent for companies in the shared economy. So long as the freelancers are not true employees and the company has no reason to know that those performing work for them lack valid work authorization in the United States, immigration compliance rules and penalties do not apply to the company.

This gap of liability creates an opportunity for many undocumented workers to earn extra income through freelancing. This is especially true for smaller companies who attempt to distance themselves from traditional employer-employee relationships in part to access more cost-effective work arrangements. The freelancer can pick up a gig simply by claiming they are authorized to work in the U.S.

However, for those companies found to actually be employing their workers, there are incentives to ensure their workforce is authorized to work in the country. The Trump Administration has promised to increase the budget and hire more investigators to Immigration and Customs Enforcement (ICE). In addition, ICE recently doubled the financial penalties for employers who fail to comply with immigration compliance requirements. For a substantive or uncorrected technical errors on the Form I-9, an employer can expect to see fines of \$216 to \$2,156 per form. Therefore, an employer with 100 employees who does not keep I-9s for its employees would be looking at a fine of \$215,600. A summary of ICE's fines and I-9 investigation can be found [here](#).

The challenge for companies seeking to move into the shared economy model for workers is

carefully documenting who is an independent contractor, a joint employee, or a true employee. If the company fails to clearly document that those who perform its work are not employees, the failure to maintain I-9s could be extremely costly. Further, if these workers are found to be employees and the employer should have known that the worker was not authorized to work in the United States, the sanctions range for \$539 to \$4,313 per unauthorized alien.

As freelancers continue to demand benefits similar to those of employees, there will be increased scrutiny on immigration compliance. Further, as the Trump Administration takes a harder stance on immigrants without legal status in the United States, many may turn to companies in the shared economy as a means to avoid detection. As investigations increase and fines continue to be assessed, immigration compliance will create additional incentives for companies to carefully define their relationships with their workers.

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**Davis C. Bae**  
Regional Managing Partner  
206.693.5060  
[Email](#)