



The PEO Immigration Survival Guide for 2025

Insights

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It's been a tumultuous start of the second Trump administration when it comes to immigration, and things won't be slowing down anytime soon. What do PEOs need to know about the current state of affairs, and what can you do to stay one step ahead of the curve?

Quick Overview

- We expect an increase in I-9 audits, worksite raids, and broader scrutiny of hiring practices, including the United States Department of Justice (USDJ) and the EEOC prioritizing national origin and citizenship status discrimination claims by U.S. persons.
- Additionally, there is speculation that legislation could make E-Verify participation compulsory for more employers.
- Meanwhile, PEOs must ensure their client support mechanisms are consistent with current law and anticipate customer questions and needs.

I-9 Compliance is More Crucial Than Ever

PEOs take various approaches to I-9 compliance, from completely allocating compliance to the customer, to facilitating it with compliance support. Regardless of your approach, understanding the underlying issues is important.

I-9 Errors Can Be Costly

I-9 errors can result in significant penalties, particularly under the current administration's enforcement priorities. Civil penalties for substantive I-9 violations have increased, and fines now range from hundreds to thousands of dollars per violation. Criminal liability is also an issue because knowingly employing unauthorized workers may lead to federal prosecution. Information a PEO receives indicating a worker may not be authorized to work in the U.S. may require follow-up. This includes information PEOs receive from third parties, such as 401k providers, medical insurance providers, electronic ACA reporting and the Social Security Administration.

Lack of Clarity

The USCIS I-9 Handbook for Employers previously indicated that PEO liability for I-9 violations was based on the amount of responsibility PEOs assumed in their contracts with customers. But the

based on the amount of responsibility PEOs assumed in their contracts with customers. But the government revised the handbook several years ago and removed this entire section. Although inquiries were made to USCIS, we are still without explanation for why this section was removed and what the current standard is. USDOJ attorneys also have not provided clear guidance.

Presumably, a similar approach to what was outlined in the handbook will apply in most settings. Liability for PEOs will likely depend on the extent to which the PEO was involved in preparing, collecting and/or reviewing I-9's.

What You Need to Know About Raids and Enforcement Actions

Due to updated enforcement priorities, it is possible some of your customers will experience raids. Customers need to know the difference between audits (usually initiated through a Notice of Inspection [NOI] and require employers to produce I-9 forms and additional records within three business days) and raids (unannounced law enforcement activities initiated through judicial warrants, often involving immediate inspections and potential detentions).

Audits

Many PEOs use software platforms which customers use to collect I-9's. Ask your software providers and legal counsel for guidance on how customers should respond when ICE asks for access to electronic I-9 data on the PEO's software platform. If your software platform meets DHS requirements, that guidance could include instructions on how to give ICE direct access with login credentials giving ICE access to I-9 data limited to the customer being audited. ICE has accepted electronic I-9 data in spreadsheet format from software providers.

Cooperation with ICE is one way to limit the risk of ICE expanding the scope of its audit beyond just one PEO customer. Clear contractual language that delineates I-9 responsibilities between PEOs and clients may also become very important in an audit if ICE begins to consider the PEO's potential liability. ICE may ask to see the contract language.

Raids

Generally, PEOs should not advise customers on the topic of raids to avoid an allegation of interference with the process. However, the PEO may provide customers with third-party resources that provide guidance either in advance of a raid or at the time of a raid.

Does E-Verify Help?

Participation in E-Verify is voluntary for most employers, though some may be required to use it depending on federal, state, or local laws. To minimize exposure, many PEOs chose not to get involved with E-Verify on behalf of their customers. If you choose to act as an "Employer Agent" for your customers, make sure your staff is properly trained on how to manage the process. All PEOs

should consider how they will respond if large numbers of customers become subject to a mandatory E-Verify rule.

Conclusion

The immigration compliance landscape in 2025 presents both challenges and opportunities for PEOs. As they have many times in the history of the industry, PEOs have the opportunity to assist customers with complex compliance challenges. But at the same time, PEOs must be cognizant of their own risk when it comes to immigration.

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