

## What are Substantive and Technical Violations of IRCA?

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The Immigration and Customs Enforcement (ICE) issued an internal document entitled, Guide to Administrative Form I-9 Inspections and Civil Monetary Penalties, on November 25, 2008. The American Immigration Lawyers Association (AILA), through a FOIA request, received a copy of the Guide. It is very insightful as to how ICE defines substantive and technical violations.

The following are substantive violations:

1. Failure to timely prepare or present the I-9;
2. Failure to ensure that the individual provides his or her printed name in Section 1 of the Form I-9;
3. Failure to ensure the individual checks a box in Section 1 of the Form I-9 attesting to whether he is a citizen or national of the United States, a lawful permanent resident (LPR), or an alien authorized to work until a specified date, or checking multiple boxes;
4. Failure to ensure an LPR or alien authorized to work provides his or her "A" Number in Section 1 of the Form I-9, but only if the "A" Number is not provided in Sections 2 or 3 of the Form I-9 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection);
5. Failure to ensure the individual signs the attestation in Section 1.
6. Failure to review and verify a proper List A document or proper List B or List C documents in Section 2 or Section 3;
7. Failure to provide the document title, identification number(s) and/or expiration date(s) of a proper List A or proper List B and List C documents in Section 2 or 3, unless a legible copy of the document(s) is retained with the Form I-9 and presented at the I-9 inspection;
8. Failure to provide the date employment begins in Section 2 of the I-9;
9. Failure to sign the attestation in Section 2 of the Form I-9;
10. Failure on the part of the employer or authorized representative to print their name in the attestation portion of Section 2.
11. Failure to date Section 2 of the Form I-9;

12. Failure to date Section 2 within three business days of the date the individual begins employment or, if the individual is employed for three business days or less, at the time employment begins.
13. Failure to recertify and complete within 90 days the pertinent Section 2 information for verification with a receipt for lost or stolen documents.
14. Failure to sign Section 3 of the Form I-9;
15. Failure to date Section 3 of the Form I-9; and/or
16. Failure to date Section 3 of the Form I-9 not later than the date of the expiration of the work authorization.

A person or entity that has committed one or more substantive violations does not have a 10-day notification and correction period and is subject to a Notice of Intent to Fine (NIF).

The following are technical violations:

1. Use of the Spanish version of the I-9, except in Puerto Rico;
2. Failure to ensure an individual provides her maiden name, address or birth date in Section 1 of the I-9;
3. Failure to ensure an LPR or alien authorized to work provides his alien number ("A" Number) in Section 1 of the I-9, but only if the "A" Number is provided in Sections 2 or 3 of the Form I-9 (or on a legible copy of a document retained with the Form I-9 and presented at the I-9 inspection);
4. Failure to ensure the individual dates Section 1 at the time employment begins;
5. Failure to ensure a preparer and/or translator provide his or her name, address, signature, or date;
6. Failure to provide the document title, identification number(s) and/or expiration date(s) of a proper List A document or proper List B and List C documents in Section 2 or 3, but only if a legible copy of the document(s) is retained with the Form I-9 and presented at the I-9 inspection;
7. Failure to provide the title, business name and address in Section 2;
8. Failure to state "Individual underage 18" in Column B, for employees under the age of 18 using only a List C document.

9. Failure to provide the date of rehire in Section 3 of the Form I-9;

For technical violations, an employer is provided with at least 10 business days to correct the violations after notification of such violations. If the employer corrects the violations within the designated time period, it is normally deemed to have complied with the requirements. If the technical violations cannot be reasonably corrected, the employer should provide ICE with an explanation in writing of why the violations reasonably cannot be corrected. If ICE determines the explanation is reasonable, the technical violation will not be considered a violation subject to a NIF.

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