

The “Seven W’s” for Developing an Effective SOP for Electronic I-9 Implementation

by Tien-Li Loke Walsh and L. Batya Schwartz Ehrens | March 2011

Introduction

Although the immigration debate in the U.S. remains in a stalemate, employers of all sizes and across every industry are swiftly becoming familiar with the jargon of worksite compliance due to increased government audits and enforcement actions. The Form I-9, which was once a routine and minor human resources formality for new employees, has become a source of anxiety for employers aware of the grave consequences of noncompliance, or even inadvertent errors in data entry or record keeping.

Many employers have made strategic decisions to invest in electronic I-9 storage and management systems like [Guardian by LawLogix](#), thereby minimizing the risk of noncompliance.

Developing an Effective Standard Operating Procedure (SOP)

Investing in electronic I-9 management systems, or even learning the vocabulary of the world of compliance, is simply not enough in today's electronic world. Electronic I-9 systems are tools designed to automate the I-9 process and reduce errors, but they do not eliminate the need for a meticulous implementation plan. Companies must also develop Standard Operating Procedures (SOPs) to integrate the electronic I-9 management system into their business operations.

Journalists depend on the “Seven W's” (Who, What, Where, When, in What way, by What means, and Why) to glean and report the most important information in a news story. Similarly, companies implementing or contemplating a migration to an electronic I-9 system can depend on these same “Seven W's” to design an SOP to effectively integrate a new electronic system, which will take into account their own unique structure and existing internal resources.

Outlined below is a sample of the essential elements which must be incorporated into any Electronic I-9 Implementation SOP.

1. **WHO: Clearly define roles and assign responsibilities to each employee involved in the I-9 process.**

- Who is responsible for I-9 intake and completion?
- Who will have access to the system?

Tip: Determine security privileges for each user and how much access to give each person. A well-designed electronic system should have the flexibility to accommodate your ideal security protocol.

- Who is responsible for monitoring expirations, and carrying out re-verification? An electronic I-9 system contains automatic prompts and alerts, but a company must determine who is accountable for monitoring or updating, or these alerts are useless.
- Who is responsible for monitoring terminations?
- Who coordinates with the internal Visa Team or outside immigration counsel for visa expirations?
- Who coordinates with the M & A Team?

2. **WHAT: Make decisions about what practices your company will routinely follow and ensure procedural uniformity throughout the entire organization, including departments, divisions, branches, any additional worksites, etc.**

- What is the company's policy towards making copies of supporting documentation to show an employee is employment authorized?
- What types of training will be conducted and how often will such training be held?

Tip: It is critical to ensure that all HR professionals, whether new employees or seasoned professionals, who are involved in the I-9 process, understand key concepts such as document abuse and avoiding discrimination, obligations to review original documents, recognizing which practices are prohibited, and understanding how to avoid them. While an electronic I-9 system will reduce errors, HR professionals, must still be familiar with the rules and requirements involved in the I-9 process. Providing ongoing training is critical. In addition, it's important to choose an electronic I-9 vendor with the requisite experience and knowledge to understand your organization's goals in moving to an electronic platform.



3. **WHERE: Identify any unique circumstances about the corporate structure.**

- Does your company have multiple locations?
- Is your company a “family” of companies with multiple entities with their own FEINs?
- Are any of your companies located in places that are subject to mandatory E-Verify?
- Do any of your companies have agreements with federal contractors or organizations that may require its contractors or subcontractors to participate in E-Verify?

- Does your company have different divisions or departments which handle the I-9 function?
- Do different worksites share resources such as Human Resources professionals?
- Do any of the companies “share” employees who may work for separate entities within the same “corporate family?”

Tip: I-9s should be completed for each entity with its own Federal Employer Identification Number (FEIN).

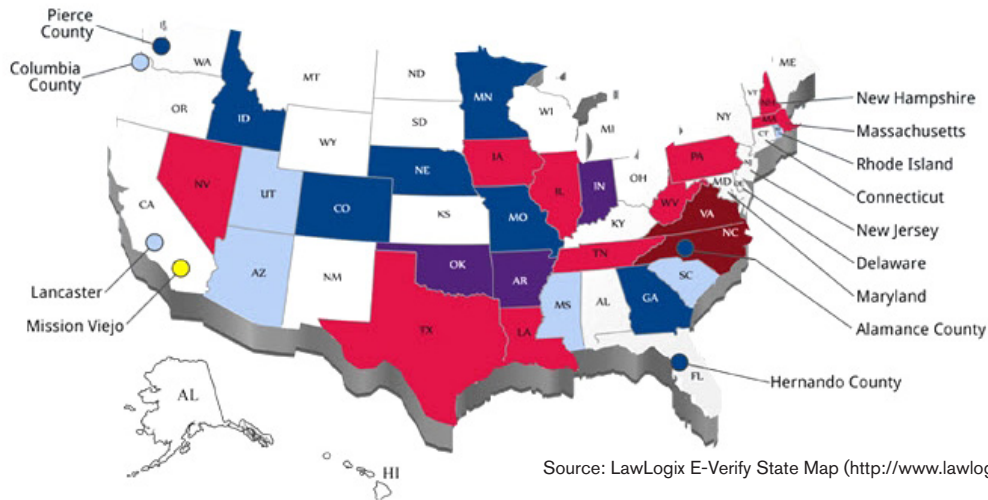
- Do you routinely hire employees for short-term projects, such as concerts, sporting events or seasonal events?
- Do you routinely establish additional companies for specific events such as “pop-up” shops or production companies which may only exist for a specific event or project?
- How centralized or decentralized will the system be within the corporate structure?

Tip: This depends on the type of organization. For example, a university may have different administrators in each department handling the I-9 function, or the payroll administrator may handle the I-9 function for the entire university. A large company with multiple locations may assign all I-9 oversight to a single department within Human Resources or have each division handle the I-9 function. Whatever you choose, you must ensure uniformity throughout the organization. These decisions depend largely on the existing structure of the entity.

4. **WHEN: Certain events demand a timely response. Develop plans of action when transitioning to an electronic I-9 system, when using the system, and when emergencies arise.**

- Develop a plan of action for key steps during the data migration processes when transitioning to an electronic I-9 system.
- Determine what to do with old paper I-9s after the data migration is complete – should the company keep them in storage or destroy them?
- Determine how to handle mistakes/omissions/missing I 9s, and who will oversee and sign off on the final migration.
- Develop a plan of action for any types of mergers and acquisitions, or corporate restructuring of any kind.
- Will the company complete new I-9s for the employees it inherits or will it accept the existing I-9s?
- Who will assume I-9 responsibilities for these “new” employees?
- Which individuals should be notified within the company to ensure efforts are coordinated?
- Develop a plan of action in the event of an ICE visit or audit request or subpoena.
- Develop a plan of action for E-Verify.
- Are any of the company’s worksites affected by E Verify? Larger companies may have worksites in locations where E-Verify is already mandatory. In these situations, it is important to ensure that the entire organization (i.e. worksites which are not subject to mandatory E-Verify) are not inadvertently signed up for E-Verify unless the company determines that enrollment is in the best interest of the company.
- Will the company eventually enroll in E-verify voluntarily or only if required by law? Enrollment in the program (and other programs such as IMAGE) is still optional for many employers, but an individual or a team must be appointed with the task to explore compliance policy options.

Tip: A well-designed electronic I-9 system will include seamless integration with the E-Verify system and have the ability to manage E-Verify use by location or based upon a qualifying federal contract (FAR).



5. **IN WHAT WAY: Identify in what way your company will oversee and carry out the I-9 process.**

Certain practical issues require attention:

- Where will employees complete the electronic I-9? A well-designed electronic I-9 system will provide several options for online access and help you maintain uniformity.
- Determine whether the employee completes the I-9 form on the first day of employment or prior to the first day.
- Will I-9 information be included in any pre-employment or on-boarding materials?
- How will your company process I-9s for remote employees?

Electronic I-9 systems such as [Guardian from LawLogix](#) have excellent components for remote employees, but companies must still have an SOP and instructions and guidance for the remote employee and the notary public or designated agent assisting with remote electronic I-9 completion.

6. **BY WHAT MEANS: Any type of implementation process requires a coordinated two-pronged approach.**

I. Appoint a Compliance Czar to ensure coordination and consistency.

Designate a specific individual responsible for overseeing the company's SOP. This "Compliance Czar" must know what is going on within the organization from "top to bottom," must have the ability to make decisions and should have an understanding of worksite compliance. The Compliance Czar will coordinate and oversee all efforts to implement the electronic I-9 program and supervise all HR professionals involved in the I-9 process. Consistency is exceedingly problematic for companies with high turnover, where it is even more important to appoint a single individual who can ensure that each new HR professional responsible for any I-9 duties receives the same instruction and oversight.

II. Seek out competent immigration counsel to assist in developing a comprehensive immigration and I-9 compliance plan and to address any legal issues that arise during and after implementation of the electronic I-9 system.

Tip: Identify a compliance expert, such as experienced outside immigration counsel, to turn to when legal issues arise.

7. **WHY: Why Your Company Must Carefully Consider Adopting Electronic I-9 Systems**

We live in the electronic age, where everything that was once tangible is now electronic. The Department of Homeland Security, and its enforcement division, ICE, have also transitioned to the electronic age as evidenced by their own electronic systems such as E-Verify and IMAGE. While paper I-9 completion is still routine, the looming threat of I-9 audits and increasing fines and penalties, are a constant reminder to companies that the status quo is no longer a viable option. Furthermore, the inevitability of mandatory E-Verify will eventually require even more coordination of internal I-9 systems. Employers seeking security and assurance that their I-9 forms are completed properly increasingly turn to electronic systems to help manage this monumental task.

Conclusion

The benefits of moving toward an electronic system are enormous. However, improvements in effective monitoring and compliance can be undermined by an inadequate electronic platform. Companies must be mindful to employ dependable systems designed to address the most complex challenges of the changing universe of worksite compliance. Some companies depend on human resource management systems containing I-9 components. These systems provide a rudimentary structure, but lack the essential components of a comprehensive I-9 system equipped and constantly updated to address today's complex I-9 and E-Verify issues.

An electronic I-9 system such as [LawLogix's Guardian](#) is equipped to deal with many of these challenges and serves as an invaluable instrument in a comprehensive I-9 compliance plan. However, electronic systems can only do so much and the biggest mistake you can make is to assume that it will do everything for you. Even as you enter into the world of electronic I-9 systems, having a comprehensive SOP is imperative. In addition, it is even more critical than ever to work with legal counsel with expertise in worksite compliance and electronic I-9 systems in order to develop SOPs specifically tailored to your company's needs, monitor your I-9 compliance efforts, conduct in-house audits to prepare for the possibility of an ICE audit, and serve as a resource for those difficult I-9 situations which will inevitably arise.

If you have recently adopted, or are considering adopting, an electronic I-9 system such as [Guardian](#), creating a plan to implement the electronic system will eliminate the stress and ensure that your company maximizes this invaluable investment. Our experienced team of worksite compliance legal advisors at the [Wolfsdorf Immigration Law Group](#) is equipped to support your transition to an Electronic I-9 System.

About Wolfsdorf Immigration Law Group

WOLFSDORF
Immigration Law Group

With offices in Los Angeles and New York, the [Wolfsdorf Immigration Law Group](#) is a full-service boutique law firm known worldwide for its unmatched excellence in providing top quality U.S. immigration representation. [The Wolfsdorf Immigration Law Group](#) is a member of the Alliance of Business Immigration Lawyers (ABIL) and ABIL Global, which has over 400 top-rated immigration professionals spanning more than 50 countries, who are available to provide comprehensive and cutting-edge immigration law and guidance.

About LawLogix

Guardian

Founded in 2000, [LawLogix](#) is the trusted provider of Electronic I-9 Compliance, E-Verify and Immigration Case Management Software for many prestigious corporations that include one of the world's top five largest banks, 3M, Pfizer, Aon Corp, Cargill, US Airways, Highmark and McKesson. As the only company in our industry with attorneys dedicated exclusively to analyzing the latest developments in I-9, and E-Verify and Immigration law, LawLogix is confident our applications will provide organizations with the most legally compliant and efficient solutions on the market.

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