

Form I-9s, Privacy and Records Requests

New Supreme Court Ruling Has Implications for Employers

***Kansas v. Garcia* - United States Supreme Court ruling issued March 3, 2020.**

Information contained in Form I-9s used to verify employees' work authorization may now be used in state criminal prosecutions for identity theft.

Analysis:

- This ruling does not change an employer's legal obligations, but may indirectly affect employers in **construction**, hospitality and agriculture, especially in states where local officials share information with federal immigration authorities (such as **Arizona**).
- I-9 audits have increased significantly.
- Implication for Employers: Potential increase in **government requests to employers for worker records**, so ensure your records are in order; know when to provide employee records and when not to provide them.

Compliance:

- Responding to Record Requests: Have policies in place for responding to requests for workers' documents, including those from ICE or other government agencies.
 - Informal request (via email or telephone) - significant risk of violating privacy protections.
 - Formal notice or subpoena.
- Avoiding Discrimination Fines/Penalties: Employers **may only** use I-9s to verify an employee's identity and work authorization.
 - Employers' cannot ask for additional documents other than those required by law.
 - Handbook for Employers M-274: <https://www.uscis.gov/i-9-central/handbook-employers-m-274>.

Handbook for Employers M-274



Guidance for Completing Form I-9 (Employment Eligibility Verification Form) | Current as of July 2017
How to Download Our Manuals in PDF (PDF)

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