



Background:

In accordance with the Immigration Reform and Control Act of 1986, the Form I-9, Employment Eligibility Verification, is required to be completed to verify the identity and employment authorization of individuals hired for employment in the United States. E-Verify, a voluntary web-based verification companion to the Form I-9, can be used to improve accuracy and integrity of the Form I-9 process.

Newly hired employees must complete Section 1 of the Form I-9 no later than the first day of employment. The employee must present original, unexpired documentation that establishes their identity and employment authorization. Employers must refrain from discriminating against individuals on the basis of national origin or citizenship; therefore, they cannot specify which document(s) the employee may present. The employer must ensure Section 1 is properly completed, review the document(s) presented by the employee, complete Section 2 of the Form I-9, and complete an E-Verify case, if applicable, within three business days of the employee's first day of employment. Per the most recent fact sheet from U.S. Immigration and Customs Enforcement (ICE), employers who fail to ensure the Form I-9 is properly completed for each employee may be subject to monetary penalties under federal law ranging from \$230 to \$2,292 for each substantive violation, which includes failing to produce the Form I-9 and uncorrected technical violations. These penalties may be assessed following a Form I-9 inspection performed by ICE depending on the number and type of violations.

In November 2017, responsibility for completing the Form I-9 for City employees moved from individual City departments to City General Human Resources (CGHR). Currently, CGHR completes the Form I-9 for all full time employees and reviews the Form I-9 for part time and seasonal employees, which are completed at the department level. City General HR does not use E-Verify. For all CDE employees, CDE Lightband Human Resources is responsible for managing the Form I-9 and E-Verify processes. CDE began using E-Verify in March 2016.

Audit Objectives and Scope:

The objectives of this audit were to:

- Assess compliance with federal law regarding Form I-9 and E-Verify
- Determine the adequacy of internal controls for Form I-9 and E-Verify processes

The audit period is January 2019 through August 2019. For CGHR, the scope includes all Forms I-9 for new hires during the audit period. We specifically excluded employees hired prior to January 2019 due to known issues, which are discussed in observation one below. For CDE, the scope includes all Forms I-9 and E-Verify case reports, if applicable, for active employees during the audit period.

For all of the Forms I-9 and E-Verify cases reviewed during the audit, every instance where a completed form differed from the Form I-9 Instructions, E-Verify User Manual, or Handbook for Employers M-274 (Handbook) was marked as an error. While it is unclear exactly which types of errors are considered substantive or technical based on the guidance, each could result in a potential fine during an ICE inspection.

Audit Results:

1. City General Human Resources Form I-9 Non-compliance

Observation:

CGHR self reported that the existence and condition of the Forms I-9 for all current employees and required former employees is unknown if hired prior to 2016. Further, Forms I-9 are not completed for elected officials, although they receive compensation. The City's external auditors also reported to management that one selected employee did not have the Form I-9 on file during FY2017 payroll testing.

There are no policies or procedures for the Form I-9 process, nor is training required for employees responsible for completing the forms. Additionally, CGHR does not perform a self audit to ensure a Form I-9 exists for each required employee.

We reviewed 26 Forms I-9 which were completed during the audit period and there were 24 forms that contained at least one error.

Examples of these errors include:

- Two instances in which Section 1 was completed after the first day of employment
- Five instances where Section 1 appears to be completed by someone other than the employee and/or preparer
- Other potential violations include: incorrect dates used, incorrect/missing information in certain fields, and boxes not selected

Management Action Plan:

City General HR will begin a self audit to ensure Form I-9 compliance. The self audit process will begin immediately, with three to four HR employees working to determine the current status of all Forms I-9. Once the status is known, a revised timeline will be developed. The self audit process may require hiring temporary staff to assist with the clean up project.

This self audit process will occur in three steps:

1. Using employee data from Munis, HR will locate and inventory existing Forms I-9 and determine if there are any missing forms. HR will work with current active employees to complete a Form I-9 if necessary. A memo of explanation will be created for missing forms of inactive employees.
2. HR will review all existing Forms I-9 of active and inactive employees that are still required to be retained to ensure forms are completed properly, correct or redo any that are not, and complete any necessary memos of explanation.
3. Purge all retained documents that meet the schedule for purging per I-9 instructions.

HR staff will draft a formal I-9 policy and procedure document which will include City General HR's Form I-9 process, required training, and self audit procedures. Additionally, HR will prepare and assign a CODI training to all staff approved to complete Form I-9. HR will centralize the Form I-9 process by completing the employer sections for all City departments, except for CDE employees and Parks & Recreation part-time or seasonal employees. HR will create and maintain a list of authorized personnel. HR staff will also continue reviewing every Form I-9 completed for completeness and accuracy. HR will begin quarterly self audits of completed forms, which will be performed by a qualified HR staff member other than the custodian. HR will require elected officials to complete Form I-9 effective immediately. HR will develop a plan to obtain completed forms from current elected officials.

Managers Responsible: Sheila Michaels and Will Wyatt

Estimated Completion Date: August 31, 2020

2. CDE Form I-9 Non-compliance

Observation:

Similarly to observations for City General, there are no policies or procedures specifically addressing the Form I-9 and E-Verify processes, nor is training required by policy for employees responsible for completing the forms. CDE does perform self audits, which is a best practice per the Form I-9 guidance, but these reviews are neither scheduled on a regular basis, documented, nor outlined in a procedure.

During our review, we noted that the HR Administrator regularly retypes the Section 1 portion of the Form I-9 previously completed by the employee, which could potentially lead to penalties during an ICE inspection. Additionally, we determined that CDE requires employees to present Social Security cards for E-Verify purposes, which is not allowed per the Handbook.

We reviewed 25 Forms I-9 and E-Verify cases, if applicable, of employees that were active during the audit period. We noted 19 Forms I-9 with at least one error. The errors included:

- One missing Form I-9, one missing E-Verify case, one page missing of Form I-9, four instances of Section 2 incompleteness
- 11 untimely completion issues with Form I-9 or E-Verify case
- Other potential violations include: incorrect dates used, incorrect/missing information in certain fields, and boxes not selected

Management Action Plan:

HR Administrators are responsible for the processing of the Form I-9 with all New Hire paperwork, with the HR Director overseeing. Training is performed at the onset of the role, with updates regularly as sent out from USCIS and with other employment law training at least annually, if not more frequently. However, there is no written procedure documenting this action, so one will be put in place that outlines the process. This will include the process, training, and self audit information.

Retyping the form was for internal use, but that practice has been stopped. Requiring the employee to bring in the Social Security card purely for purposes of the Form I-9 has also been stopped.

Management has requested a list of these mistakes to ensure all are corrected immediately; that list has been received. Of these mistakes, few were considered to be substantive, however all will be corrected.

Following the audit, the HR team has taken the following actions:

- Purging all following guidelines; retaining a list of all purged forms
- Ensure 100% of all active employees have Form I-9 on file
- Begin 100% complete file audit of all forms per USCIS Guidelines and training
- Establishing timing for all self-audits going forward where a sample will be pulled for review by one team member, checked by another and audited by the HR Director. A listing of the self-audit sample will be tracked.

Managers Responsible: Privott Stroman, CDE Lightband Director of Human Resources

Estimated Completion Date: **March 31, 2020**

Other Recommendations:

Purge forms no longer required to be retained

Form I-9 Instructions and City Code, Appendix D, Records Retention Policy state the Forms I-9 should be retained for three years from the date of hire or one year after the date employment ended, whichever is later. Management should only keep forms required to be retained. In the event of an ICE inspection, retaining old incomplete forms may subject the employer to fines and penalties associated with incomplete forms, even if forms were no longer required to be retained.

City General Human Resources should use E-Verify

E-Verify is an electronic confirmation system that helps improve accuracy and integrity of the Form I-9 process.

Other Recommendations (continued):

Although it is a voluntary program and not currently required of public employers by state law, future federal contracts may require the use of E-Verify for all new hires and all employees assigned to the contract.

Complete Section 2 of the Form I-9 in the physical presence of the employee

Section 2 should not be completed based on photocopies of documentation provided by the employee. Form I-9 Instructions state that employers must always complete Section 2 based on the original documentation reviewed and inspected in the physical presence of the employee.

Management Comments:

CDE: Form I-9 files will be purged three years from the date of hire or one year after the date employment ended, whichever is later. Section 2 will be completed in the presence of the employee during OnBoarding.

CGHR: Purging forms no longer required to be retained will be completed as part of HR's clean up plan discussed above. HR has not determined if they will begin to use E-Verify. HR will research and review pros and cons with the City's Legal Department and the Risk Manager. HR will begin completing Section 2 in the presence of the employee and ensure that those responsible will be trained.

Managers Responsible:

CDE: Privott Stroman, CDE Lightband Director of Human Resources

CGHR: Sheila Michaels, HR Analyst and Will Wyatt, HR Director

Estimated Completion Date:

CDE: March 31, 2020

CGHR: E-Verify decision: March 31, 2020; Purging: August 31, 2020