



Virtual Webinar

Dec 17, 2025

Thank you for joining us!

We'll start promptly at 11 am.

Legal Webinar

Owner Purchased Materials and Much More

*A conversation with **Trent Cotney***

Adams & Reese LLP



To earn your CIU's you must sign in and/or stay on the webinar the full time. Thank you!

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Webinar Courtesies:

- ★ Thank you to our virtual attendees for being on-time.
- ★ Participant videos are turned off and all attendees are muted.
- ★ **Please participate through use the Q&A and Chat functions for your questions.**
- ★ If you are participating as a group in a team setting, please take a quick photo and email Debbie a list of all participants, including their first and last names.
- ★ Final note, **in order to earn CIU credit**, you will be required to answer a final poll question at the end of today's presentation.

Introduction



LATEST ISSUES AND
CONTRACT PROVISIONS



MAJOR CHANGES

Owner- Purchased Materials

Owner Purchased Materials can shift risk without reducing responsibility. Watch for:

- **Warranty Gaps**

Manufacturer warranties may not apply if materials are improperly stored, delayed, or installed outside required conditions.

- **Damage Before Delivery**

Contractors are often blamed for damage to materials they did not purchase, control, or store.

- **Specification and Compatibility Issues**

Owner-selected materials may not align with the specified roof system, fastening patterns, or manufacturer approvals.

- **Schedule Delays**

Late or incomplete deliveries can disrupt sequencing while still exposing contractors to delay claims.

- **Title and Risk of Loss Confusion**

Unclear ownership can create disputes over who bears loss, theft, or deterioration before installation.

- **Code and Performance Liability**

Contractors may still be held responsible for code compliance and performance—even when they did not select the materials.

Owner Purchased Materials

Owner-Purchased Materials (“OPM”) are materials, equipment, or components furnished by Owner or others on Owner’s behalf. Contractor shall have no responsibility for the selection, suitability, design, code compliance, compatibility, or performance of OPM. Contractor’s obligations are limited solely to installation of OPM in accordance with the Contract Documents and written manufacturer installation instructions provided prior to installation.

Title to and risk of loss for OPM shall remain with Owner until the materials are permanently incorporated into the Work. Contractor shall not be responsible for loss, theft, damage, deterioration, or delay related to OPM, including storage or weather exposure.

Contractor shall have the right to inspect OPM upon delivery and may reject materials that are damaged, nonconforming, incomplete, incompatible, or not delivered in accordance with the Project schedule. Installation of OPM shall not constitute acceptance of design responsibility, system performance, or warranty obligations.

Contractor shall be entitled to an equitable adjustment of Contract Time and Contract Sum for any delay, disruption, or additional cost arising from OPM, including late delivery or defects. Owner shall be responsible for warranties associated with OPM.

Core Sample Release

Contractors use core samples to determine roof composition and evaluate whether repair or replacement is advisable.

Because the process involves penetrating roof membranes and substrates, it carries inherent risks: potential leaks, weakened materials, or disturbing concealed systems.

The clause clarifies that the contractor's role is diagnostic, not exhaustive, and shifts responsibility for incidental damage to the owner, except in cases of gross negligence or willful misconduct.

Core Sample Release

Contractor will remove one or more roof core samples solely to evaluate existing roof composition and determine whether replacement or repair is advisable. The sampling is limited to the specific locations selected by Contractor and does not constitute a full inspection of hidden conditions. Core sampling requires penetrating roof membranes, decks, and any overlying materials. Although Contractor will replace each core, apply temporary patching materials, and photograph the work, the process can create pathways for future water intrusion, disturb concealed systems, or weaken aged substrates. **To the fullest extent permitted by law, Owner releases and forever discharges Contractor, its employees, and subcontractors from all claims, damages, losses, costs, or expenses of any kind arising out of or related to the core-sampling process, including but not limited to leaks, interior damage, roof system failure, or warranty invalidation, except to the extent caused by Contractor's gross negligence or willful misconduct.**

Wind Uplift Disclaimer

The contractor's price, warranty, and obligations are based on a specified wind-uplift rating, typically tied to tested system design and manufacturer criteria.

This provision makes clear that if wind pressures exceed that limit or site conditions differ from the assumptions used, resulting damage or failure is outside the contractor's control.

The clause shifts the risk of extraordinary wind events and structural deficiencies to the owner while offering an option to request a higher-rated system through a change order before work begins.

Its purpose is to align expectations, limit liability, and document the performance standard the roof is designed to meet.

Wind Uplift Disclaimer

- Contractor's price, warranty, and all obligations under this Agreement are expressly conditioned upon the specified wind uplift limit. Owner acknowledges that wind events producing pressures in excess of the stated limit or arising from site conditions that vary from the assumptions above may compromise roof integrity, void manufacturer warranties, or cause failure of the substrate, fasteners, flashing, or accessories. Contractor shall not be responsible for any damage, loss, defect, or water intrusion resulting from wind forces that exceed the design limit or from structural deficiencies in the supporting deck or building envelope. If Owner desires a higher wind-uplift rating, Contractor will, upon written request before material ordering, provide a change order identifying the required system upgrades, cost, and revised schedule.

Roof Access and Maintenance Provision

Once substantial completion occurs, the owner assumes full control over roof access and maintenance.

Because unauthorized entry and poor maintenance are common causes of leaks and damage, the clause requires the owner to obtain the contractor's written approval before allowing non-exempt roof access, maintain a detailed access and maintenance log, and promptly report any leaks or damage.

If the owner fails to follow these requirements, claims for later roof problems may be waived or presumed to result from improper access or third-party activity.

The provision's purpose is to clearly define responsibility, create a documented chain of custody for roof access, and limit the contractor's exposure to post-completion damage outside its control.

Roof Access and Maintenance

1. Control of Roof Access.

Upon Substantial Completion, the Owner shall assume full responsibility for controlling and monitoring access to the roofing system. Because unauthorized traffic and maintenance failures are known causes of roof damage, flashing displacement, and warranty voidance, no person or entity may access, traverse, or perform work on or above the roof without the Contractor's prior written approval, except in the following circumstances:

- (a) emergencies affecting life safety or active water intrusion;
- (b) access by the roofing system manufacturer, insurer, or governmental authority in the exercise of their lawful duties; or
- (c) entry by building maintenance staff performing routine, non-intrusive observation, provided such activity does not involve mechanical equipment or roof penetration.

The Owner shall request approval for all other access at least three (3) business days in advance, identifying the name, company, and purpose of each person or entity seeking entry. The Contractor may reasonably condition or deny access to protect the roofing system or preserve warranty coverage.

2. Roof Access and Maintenance Log.

The Owner shall maintain a written or electronic Roof Access and Maintenance Log documenting each access event, including the date, name, company, purpose, and any work performed or roof condition observed. The Log shall include entries for emergency or authorized manufacturer visits as soon as practicable thereafter. The Owner shall retain all records for the duration of the warranty period and make them available to the Contractor upon request.

3. Notice of Access, Damage, or Leak.

The Owner shall provide written notice to the Contractor within three (3) business days of (a) any observed roof damage or irregular condition, or (b) any water infiltration or leak. Failure to provide timely notice may prejudice the Contractor's ability to inspect, mitigate, or maintain warranty coverage.

4. Waiver and Limitation of Claims.

If the Owner (i) fails to obtain the Contractor's prior written approval for non-exempt roof access, (ii) fails to maintain the Roof Access and Maintenance Log, or (iii) fails to provide timely written notice as required above, the Owner expressly waives and releases the Contractor from claims, damages, losses, costs, or expenses arising out of or related to roof performance, leaks, or defects occurring after Substantial Completion, but only to the extent such claims could have been prevented or mitigated by compliance with this provision. This waiver shall not apply to claims resulting from the Contractor's gross negligence, willful misconduct, or fraud.

5. Presumption of Responsibility.

In any dispute involving post-completion roof performance, the absence of a complete and contemporaneous Roof Access and Maintenance Log, or proof of prior written approval, may create a rebuttable presumption that the damage, leak, or defect was caused by post-completion access, misuse, or third-party activity. The Owner shall bear the burden of producing contrary evidence.

6. Limitation of Damages.

The Contractor's liability to the Owner for any claim arising out of or relating to the roofing work shall be limited to actual, direct damages proven to have been caused by the Contractor's breach of this Agreement. The Contractor shall not be liable for consequential, incidental, indirect, special, exemplary, speculative, or punitive damages, including, but not limited to, loss of profits, loss of use, loss of business reputation, or damage to the interior, equipment, or other property not part of the roofing system.

7. Survival.

This provision shall survive final payment, completion, and expiration of any warranty period.

Trump Administration Changes



Deregulation

- Executive orders reversing many of President Biden's previous orders.
- Executive Order: Temporary freeze on new regulations from federal agencies, including DOL/OSHA, NLRB, and the EPA.
- OSHA heat standard is still moving forward



One Big Beautiful Bill

- 1. 100% Bonus Depreciation Now Permanent** – You can fully expense eligible equipment and property in the year of acquisition with retroactivity starting January 19, 2025.
- 2. Section 179 Expensing Increased** – The deduction limit rises to \$2.5M, phasing out when purchases exceed \$4M.
- 3. Immediate Expensing for U.S. Production Property** – Nonresidential property used in manufacturing qualifies for full depreciation if construction begins between January 20, 2025 and the end of 2028 and is placed in service by January 1, 2031 (awaiting additional IRS guidance).
- 4. Restore R&D Expense Deduction** – Domestic research expenses are fully deductible in the year incurred; eligible small businesses may be able to amend 2022-2023 (and in some cases 2024) returns, with an election deadline of July 4, 2026.
- 5. Permanent 20% QBI Deduction** – The pass-through business deduction is now indefinite, lowering effective top tax rates.
- 6. More Interest Deductions Allowed** – The interest expense limit now uses EBITDA instead of EBIT, benefiting capital-heavy companies.
- 7. Higher SALT Cap (Temporary)** – SALT deductions increase to \$40K (indexed) through 2029, phasing back to \$10K in 2030; high earners face gradual phase-outs.
- 8. Accelerated Cutoff for Green Energy Credits** – Energy-efficient building deductions (179D) and home credits (45L) now expire after mid-2026.
- 9. Expanded Revenue Deferral for Residential Projects** – Larger developments including more than four units can now defer income recognition until project completion.
- 10. Temporary Overtime Deduction (2025–2028)** – Workers may deduct up to \$12,500 (\$25,000 joint) for qualifying overtime pay, subject to income phase-outs.

Tariffs and Price Acceleration

- If there is an increase in the actual cost of the labor or materials charged to the Contractor in excess of 5% subsequent to making this Agreement, the price set forth in this Agreement shall be increased without the need for a written change order or amendment to the contract to reflect the price increase and additional direct cost to the Contractor. Contractor will submit written documentation of the increased charges to the Prime Contractor/Owner upon request. As an additional remedy, if the actual cost of any line item increases more than 10% subsequent to the making of this Agreement, Contractor, at its sole discretion, may terminate the contract for convenience.





Tariff Surcharge Adjustment

The Contract Sum includes Import Costs (tariffs, antidumping duties, customs fees) in effect as of _____, 2025. If aggregate Import Costs on any shipment increase by more than 5% of the Equipment/Material invoice value, Contractor shall notify Owner in writing within 7 days and may add the excess amount to the next payment application, supported by U.S. Customs entry summaries. Owner may elect to (a) pay the surcharge; (b) furnish tariff-free substitute materials meeting specifications; or (c) terminate the affected work for convenience with payment for completed work pursuant to the Contract Documents. Import-cost decreases in excess of 5% shall be credited to Owner on the next payment application following the decrease.

Force Majeure

- **Any failure or delay by a party in the performance of its obligations under this Subcontract is not a default or breach of the Subcontract or a ground for termination under this Subcontract to the extent the failure or delay is due to elements of nature, Acts of God, acts of war, terrorism, tariffs, riots, revolutions, tariffs, pandemics, medical emergencies that have resulted in a local, state, or federal state of emergency, Coronavirus (COVID-19) or similar viruses or illnesses requiring quarantine, strikes or other factors beyond the reasonable control of a party (each, a "Force Majeure Event"). The party failing or delaying due to a Force Majeure Event agrees to give notice to the other party which describes the Force Majeure Event and includes a good faith estimate as to the impact of the Force Majeure Event upon its responsibilities under this Subcontract, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than thirty (30) days, or should three (3) Force Majeure Events apply to the performance of a party during any calendar year, the party not subject to the Force Majeure Event may terminate this Subcontract by notice to the party subject to the Force Majeure Event.**

Labor Increase Provision

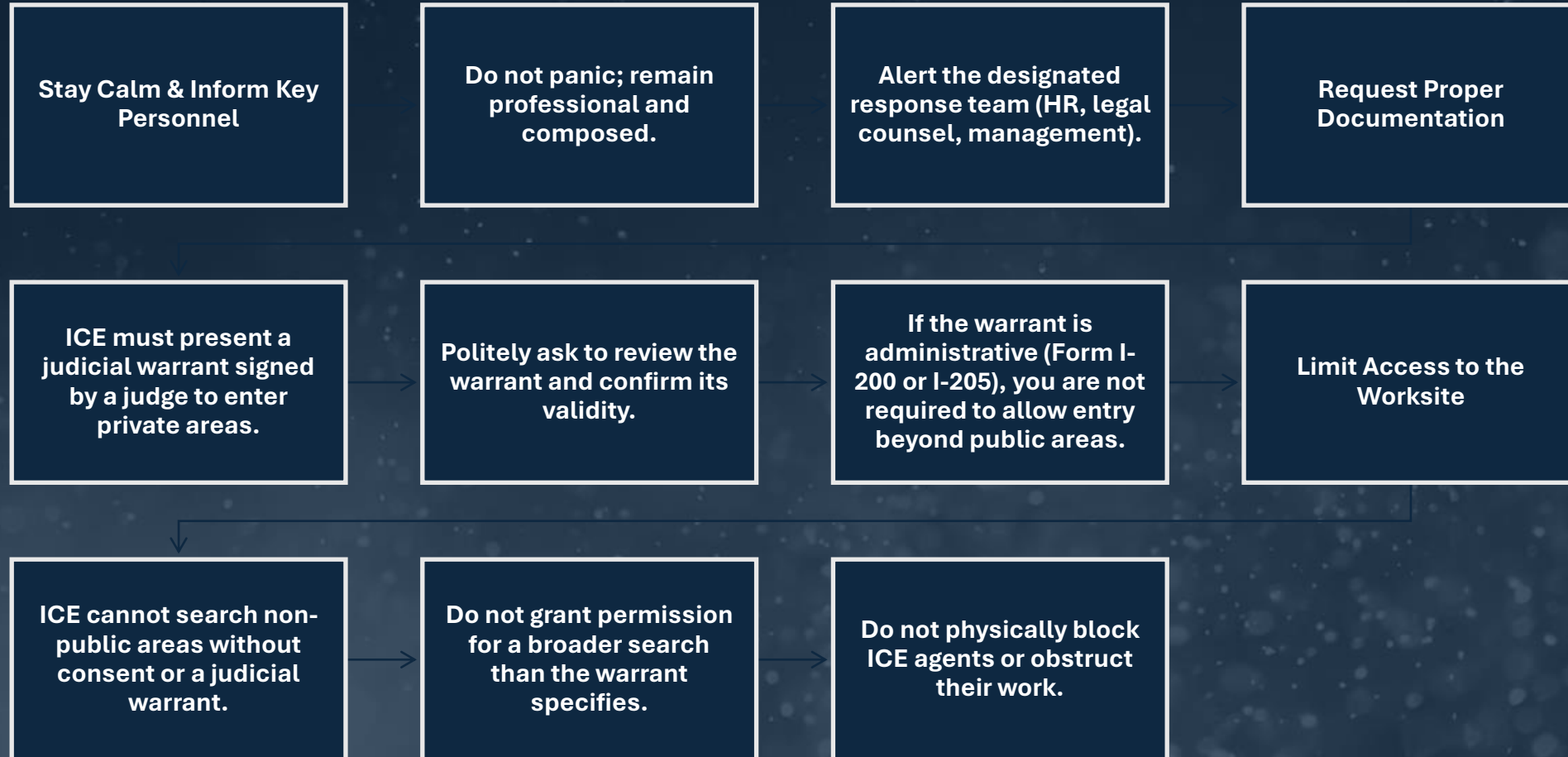
In the event of an increase in labor costs due to changes in federal, state, or local wage laws, union agreements, prevailing wage requirements, or other legally mandated adjustments, the Contractor reserves the right to adjust pricing accordingly.

If such an increase occurs after the execution of this Agreement but before the completion of the work, the Contractor shall provide written notice to the Customer detailing the additional labor costs. Upon receipt of such notice, the Customer agrees to either:

- 1. Accept the adjusted pricing, with the increase being incorporated into the remaining payments under this Agreement; or**
- 2. Negotiate a mutually acceptable adjustment to the scope or timeline of the project to mitigate the increased labor costs.**

Failure to reach an agreement within 5 days of notice shall entitle the Contractor to suspend performance until resolution is achieved. In the event of prolonged non-resolution exceeding 10 days, the Contractor may terminate this Agreement without penalty and for convenience, and the Owner shall compensate the Contractor for all work performed up to the termination date.

How to Handle an Ice Raid



UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*

)
)
) Case No.
)
)
)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(Identify the person or describe the property to be seized):*

YOU ARE COMMANDED to execute this warrant on or before _____ *(not to exceed 14 days)*

in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*

for _____ days *(not to exceed 30)* until, the facts justifying, the later specific date of _____

Date and time issued: _____
Judge's signature

City and state: _____
Printed name and title

Enforceable & Binding Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations:

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Non-Binding ICE Warrant

Do Not Interfere, But Do Not Consent

- Do not **voluntarily provide** documents or employee records unless legally required.

Educate Workers on Their Rights

- Employees have the right to **remain silent** and **request an attorney** before answering questions.
- They are **not required** to sign any documents without legal review.

Document Everything

- Take notes on what ICE agents say and do.
- Collect **names, badge numbers, and warrant details.**
- If possible, record the encounter (if legally allowed).

Notify Legal Counsel Immediately

- Contact an immigration or employment attorney as soon as possible.
- Do not make statements to ICE on behalf of employees without legal guidance.

Follow Up & Support Affected Employees

- If employees are detained, **coordinate with legal counsel** for next steps.
- Consider offering **legal resources or referrals** to impacted workers.

Employee Support

Educate Workers on Their Rights

- Employees have the right to **remain silent** and **request an attorney** before answering questions.
- They are **not required** to sign any documents without legal review. Consider “rights cards.”

Notify Legal Counsel Immediately

- Do not make statements to ICE on behalf of employees without legal guidance.

Follow Up & Support Affected Employees

- If employees are detained, **coordinate with legal counsel** for next steps.
- Consider offering **legal resources or referrals** to impacted workers.

I-9 Audits

Review the Notice of Inspection (NOI)

- Employers typically have **3 business days** to respond.
- Identify the agency conducting the audit (DHS, ICE, or DOJ's IER).

Assemble I-9 Forms & Supporting Documents


- Gather all **Form I-9s** for current and past employees (usually past 3 years).
- Ensure records are **organized and complete** before submission.

Conduct an Internal I-9 Review

- Identify **missing, incomplete, or incorrect forms**.
- Make allowed corrections (initial and date changes).
- Do NOT backdate or falsify documents.

Consult Legal Counsel

- Consider **immigration or employment counsel** to guide the response.
- Review potential liability and strategy for handling errors.



Best Practices for I-9 Audits

Limit Communication with Investigators

- Assign a **single point of contact** for interactions with auditors.
- Do not allow ICE to interview employees without legal guidance.

Know Common I-9 Errors & Fix Them in Advance

- Missing employee signatures
- Incorrect document verification
- Failure to reverify work authorization

Avoid Discrimination & Retaliation

- Do not selectively target employees for I-9 review based on nationality.
- Avoid retaliation against employees with discrepancies—correct them properly.

Establish an Ongoing I-9 Compliance Process

- Conduct **annual internal audits** to catch issues early.
- Train HR personnel on proper I-9 completion & storage.
- Use **E-Verify** where required for additional verification.



Final Notes on the Form I-9

- Record Retention:
 - Employers should keep I-9 files separate from employee files (not part of employee's general personnel file).
 - Employers must keep a copy of the Form I-9 for the **entirety of the employee's employment** and for a **period of time after employment ends**. After employment ends, the employer must keep the Form I-9 for the longer of (a) 3 years after employment started; or (b) 1 year after ended, whichever is longer.
- Errors in I-9 Form: When filling out the Form I-9, it's easy to make minor, technical errors. However, if those technical errors aren't correct and the government audits your I-9 files, each error can be grounds for a monetary penalty of at least \$288 per deficient Form I-9.
 - **TIP**: Periodically audit your I-9 files for compliance (e.g., annual audit). Most of these technical errors can be corrected to avoid a penalty.

Questions?



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Final comments:

- ★ Thank you, Trent!
- ★ A survey will be sent after the seminar, please take the time to respond. Your feedback helps us plan future webinars and seminars.
- ★ Thank you for staying on the webinar the full time.
- ★ CRA Members, please answer this final poll question to earn your CIUs. Then, you are free to hop off and end your session.

Thank You for attending!