

THE IMMIGRATION EDGE

ICE Announces Nationwide Investigations of I-9 Forms for More Than 1,000 Companies

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On February 18, 2011, U.S. Immigration and Customs Enforcement (“ICE”) announced a nationwide wave of I-9 investigations and demands for document review affecting more than 1,000 companies across all 50 states. These enforcement actions, affecting businesses of all sizes, reaffirms the current Administration’s commitment to increase immigration sanctions against U.S. employers.

Who is Being Targeted?

According to an e-mail statement, ICE claimed that “inspections will touch on employers of all sizes and in every state in the nation — no one industry is being targeted, nor is any one industry immune from scrutiny.” Although audits are usually performed in the state where a company’s headquarters are located, ICE is now reportedly instructing agents to audit other branches of companies if records suggest that non-compliant practices or records may be pervasive. ICE has recently opened an employment compliance center in the Washington, D.C. suburb of Crystal City, Va., with full-time agents ready to serve in support of ongoing worksite audits across the country.

Under the current Administration, ICE has aggressively investigated and fined U.S. employers for I-9 violations. In FY2010, ICE performed 2,746 worksite investigations, arrested 196 employers and issued fines of nearly \$7 million. This recent round of raids suggest that this pattern of escalating enforcement will continue.

What Are the Penalties?

The Immigration Reform and Control Act of 1986 (“IRCA”) imposes liability on employers who knowingly hire aliens not authorized to work in the United States. At the same time, the employer must not discriminate based on citizenship or nationality, or request excessive documentation. To fulfill the obligations, employers must verify the employment eligibility of all workers by reviewing original documents evidencing employment authorization, and by recording the information on the I-9 form.

Fines for uncorrected technical errors on the forms range from \$110 to \$1,100 per form. Higher fines of up to \$16,000 per person can apply for knowingly employing unauthorized workers.

How Should Employers Respond to an I-9 Investigation?

An employer who receives a subpoena or other immigration inspection notice should carefully review the documentation, and in most instances, take the following steps:

- If needed, request an extension of time beyond the three days required by law;
- Contact immigration counsel to discuss your rights, obligations and options for reducing potential liability or disruption to the business;
- Review the company's I-9 forms and copies of employment documents kept with the I-9 forms;
- Correct technical errors in the I-9 forms before submitting the documentation to ICE; and
- Develop a plan for future compliance.

In these investigations, ICE insists on near errorless completion of I-9 forms, and frequently assesses fines for technical paperwork violations, even in cases where employees were authorized to work in the United States. Companies who evade ICE audits in this round should take the opportunity to conduct internal audits of their I-9 forms and practices. Consider contacting an attorney if you have questions on compliance.

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