

**Title: The Construction of an LLR Immigration Audit**  
**By: Charles Appleby and Christian Boesl**

Construction sites and home builders across South Carolina may be audited now that the South Carolina Illegal Immigration Reform Act is in effect for all businesses. Starting in July 2009, companies with at least 100 employees and those with government contracts had to begin following the Act. As of July 2010, the Act applies to all businesses no matter how big or small. This means all employers must verify the legal status of new employees.

Here's how the audit works. Employers will receive a letter or an e-mail from the Department of Labor, Licensing and Regulation (LLR) informing the business that LLR wants to perform an audit. Employers also will receive an Affirmation of Legal Work Status Form to complete and sign. If the employer uses E-verify, the employer will want to contact legal counsel before completing the form, as some of the requests in the form may put an employer in jeopardy of violating the Memorandum of Understanding (MOU). The MOU is an agreement the employer entered with the Department of Homeland Security when signing up for E-verify.

After an employer contacts LLR to setup a time for the audit, the investigator will visit the company or review the necessary documents at the office of the company's legal counsel. The investigator will want you to have certain information on hand for the audit.

If employers use E-verify, you need to have a list of all current employees, as well as a list of current employees with a post hiring date of July 2009. You also should print out the E-verify user audit report. It's important to note E-verify requires verification within three days of the hiring date. Expect LLR to review these documents looking for employees who were not entered into E-verify within five days of the hire date. Investigators may choose to conduct interviews of the employees who were entered into the computer data system late.

Employers who check licenses and IDs also need a list of all current employees and a list of employees with a post hiring date of July 2009. Keep in mind, for businesses that do not use E-verify, investigator's will likely select random employees to interview. If an investigator does choose to interview, the interview normally will be short and may include questions like an employee's name, address and whether the employer has any knowledge of illegal workers.

The employer should receive a letter from LLR headquarters sometime between 45 to 60 days after the audit. That letter will state the audit's findings. If there were violations, the number of violations will be in the letter as well as the fine per violation. Those fines generally range from \$100 -\$1,000. The good news is, if the company is a first-time offender and the violations are corrected within 72 hours, the fines are usually waived. However, LLR will post your company's violations on the LLR website. If you believe your company was cited falsely, you have 30 days to appeal the citation.

*Charles Appleby is an associate and member of the Collins & Lacy, P.C. Employment and Construction Practice Groups. Christian Boesl is a shareholder and chair of the Employment Practice Group. For more information, call 803-256-0417.*