

## ICE Ramps Up Audits, Enforcement, Sends Notices to 650 Businesses

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On July 1, 2009, **U.S. Immigration and Customs Enforcement ("ICE")** launched a new audit effort by issuing over 650 Notices of Inspection ("NOIs") to businesses nationwide. The NOIs alert businesses that ICE will be inspecting their Form I-9 employment eligibility records to determine whether or not they are complying with employment eligibility verification laws and regulations. This newest enforcement effort by ICE follows a recent **Department of Homeland Security ("DHS")** announcement that ICE will focus its resources on criminal prosecution of employers who knowingly hire illegal workers and that the agency will use all available tools, including civil fines and debarment, to penalize and deter illegal employment.

"Knowingly hiring" can be a tricky legal concept because employers can also be held liable if they had "constructive knowledge" that a worker was not eligible for employment. Constructive knowledge has been found where employers did not complete I-9 forms or completed I-9 forms incorrectly. Civil fines for employers can range from \$3200 (per violation) for a first offense to \$16,000 (per violation) for a third or subsequent offense. All company representatives verifying employment eligibility of employees are potentially liable, both criminally and civilly, for errors in completing I-9 Forms.

So what can U.S. businesses do to mitigate exposure stemming from their I-9 programs? It is imperative, now more than ever, that employers implement I-9 Compliance Programs that include proper training, internal audits, and third-party audits. The **E-Verify** program, an online system operated jointly by DHS and the Social Security Administration ("SSA"), also provides employers with a "safer harbor" within which to operate.

If you'd like to know more about how the program works to reduce risk and increase the chance that an audit will leave your HR staff smiling, call or email me: Oliver Branch, (919) 993-3300 or **[OBranch@SandsAnderson.com](mailto:OBranch@SandsAnderson.com)**

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