

Management Alert

Homeland Security Focuses Immigration Spotlight on Employers: ICE Launches Hundreds of I-9 Audits

In the Obama administration's first major workforce-compliance enforcement action, Immigration and Customs Enforcement (ICE) recently notified 625 employers of plans to audit their I-9 forms and files. The Department of Homeland Security (DHS), the agency in charge of ICE, announced that it served "Notices of Inspection" to these businesses, although DHS would not release the names or locations of the businesses because of the ongoing investigations.

Company officials must therefore take proactive steps to confirm that their new hires and current employees (and the employees of their vendors and contractors) are authorized to work under federal immigration law. The challenges are compounded for employers doing business in multiple states, since many cities and states have passed laws and ordinances that surpass federal law in enforcing additional immigration penalties. Enforcement activity in the worksite—both by federal and state agencies—has grown significantly, and the tactics deployed are increasingly aggressive.

Today, penalties for violations of federal and state immigration rules extend beyond costly civil fines; they also include imprisonment, asset forfeiture, and debarment from government contracting and from sponsorship of additional foreign workers. Executives, business managers, human resources staff members, worksite supervisors, and union stewards all face potential civil and criminal liability for failure to abide by the immigration laws.

What does the Stepped-Up ICE Enforcement Mean for My Business?

Under the Immigration and Nationality Act and Homeland Security regulations, employers face expensive civil fines for violating employment-eligibility (I-9) requirements, including the employment of workers in situations where the employer knew or should have known that one or more employees lacked the right to work in the United States. Steep fines can also be levied for failing to maintain required immigration paperwork and engaging in illegal discrimination based on national origin or citizenship status. Fines for knowingly employing an undocumented worker have increased significantly and continue to escalate with increases in the cost of living. The maximum fine now ranges from \$11,000 to \$16,000 per worker. Given these increases, employers must evaluate their current compliance practices and take corrective actions to ensure a fully authorized workforce.

What Should My Company Consider as Precautions?

Electronic I-9 Creation and Storage: A number of vendors now offer sophisticated Form I-9 compliance software packages that prevent errors before they risk exposing an employer to expensive fines. These electronic I-9 systems maximize accuracy in completion of the form and allow for electronic signature and storage of I-9 forms and documents confirming employment authorization and identity. They also include “tickler systems” to notify the employer before a worker’s employment permission must be re-verified. These I-9 software systems also enable the scanning and indexing of existing I-9s so that the required immigration paperwork for the employer’s entire workforce is maintained electronically and readily accessible in case of government audits or enforcement actions.

Government Investigations and Employer Defense: What would you do if your worksite is visited by agents of U.S. Customs & Immigration Enforcement, the Wage and Hour Division of the U.S. Department of Labor, the U.S. Department of Justice’s Office of Special Counsel for Unfair Immigration-related Employment Practices, or the Office of Federal Contract Compliance Programs? Are you ready with required paperwork if your company is given 72 hours to turn over its original I-9s to the government? What can you do to reconcile missing or incorrect information? What defenses can you raise, and how can you lessen potential legal risks? You should work with your legal counsel, preferably before the Feds knock at your door, in order to review your I-9 forms, make corrections, and take other steps your counsel suggests. Your counsel should also be ready to provide on-site representation during government worksite enforcement actions and assist clients in negotiating with government agencies to try to minimize fines and penalties.

Voluntary I-9 Audits: All organizations should conduct internal I-9 reviews on a regular basis before government immigration agents come knocking on your door. But a mere internal audit, without professional legal guidance, may not yield the best results. Your legal counsel should review your I-9s and evaluate errors across a list of more than 30 potential problem areas, and then make recommendations for I-9 corrections, disposal, or documents that no longer must be kept.

I-9 Compliance Training: You should seek legal counsel for training of your recruiters, Human Resources professionals, and managers to identify and avoid the many pitfalls involved with completing, maintaining, and re-verifying your company’s I-9 forms.

Advice on Social Security Administration “No-Match” letters: Do your key personnel in payroll and HR know what they must do when responding to SSA “No-Match” letters? Under what circumstances must or should you terminate an employee? Your immigration and employment law counsel should provide you with guidance in this confusing area to help you avoid negative publicity, brand damage, and lost profits.

Guidance on State Immigration/Workplace Enforcement Laws: There are now more than a dozen states with their own immigration/workforce compliance laws and over 1,000 immigration-related bills were introduced in the states in the first quarter of 2009. Is your business operating in a state that has its own immigration-related statutes? Are you doing what is necessary to comply with the law and avoid the risk of compromising your business? Check with your local HR trade group, chamber of commerce, or lawyers to be guided on state-law immigration compliance concerns.

Opting-Into or Declining E-Verify Participation: What are the benefits and disadvantages of this government-run online system for employment verification? Should your company register at one worksite or nationally? What resources must your company commit to comply with E-Verify? Are you a federal contractor or subcontractor or a business operating in a state where E-Verify is or may become mandatory? Do you regularly employ F-1 students in fields of Science, Technology, Engineering, or Math (STEM students) who may benefit from up to 29 months of work permission (optional practical training) if your company uses E-Verify? Contact your local HR trade group, chamber of commerce, or immigration and employment attorneys to be guided on E-Verify concerns.

For more information, please contact the Seyfarth attorney with whom you work or Business Immigration attorney on our website (www.Seyfarth.com/BusinessImmigration).



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