

Immigration Sweep on Employers' I-9 Forms

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On September 16, the Department of Homeland Security launched a widespread operation to investigate employers' immigration compliance as its U.S. Immigration and Customs Enforcement ("ICE") agency began issuing subpoenas and Notices of Inspection ("NOI") to more than 500 companies.

Who Is Targeted in the Sweep?

According to ICE, this round of targets resulted in part from specific leads and whistleblower allegations of employer noncompliance, hiring unauthorized workers and paying unfair wages. As with most enforcement operations, ICE officers are conducting audits of I-9 forms and, in some cases, more extensive investigations of the targeted companies. Under the law, employers have three business days to submit I-9 forms for inspection; however, an extension may be requested.

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-9s.
- Correct technical errors in the I-9 forms before submitting the documentation to ICE.
- Develop a plan for future compliance.

ICE is aggressive in thwarting the employment of an unauthorized workforce in the United States, and is insisting on near errorless completion of I-9 forms by assessing fines. Employers 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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