



Legal Alert: Second Wave of I-9 Audits: ICE Sends Notices of Inspection to 1,000 Employers

11/20/2009

On November 19, 2009, U.S. Immigration and Customs Enforcement (ICE) announced that it had issued Notices of Inspection (NOIs) to 1,000 employers across the country who are involved with critical infrastructure. The NOIs mean ICE will be auditing the employers' hiring records, specifically their Form I-9s, to determine compliance with the employment eligibility verification laws.

According to ICE, the businesses notified of I-9 audits this week were selected for inspection based on investigative leads and intelligence, and because of the business' connection to public safety and infrastructure. This recent announcement illustrates the agency's significantly increased aggressiveness in focusing on I-9 audits as an enforcement tool to crack down on the employment of unauthorized workers.

This is a second major wave of I-9 audits by ICE, which follows the issuance of NOIs to 652 employers in a single day earlier this year.

ICE Worksite Enforcement Strategy

In April 2009, the U.S. Department of Homeland Security issued updated worksite enforcement guidance that outlined the new administration's strategy and described ICE's major enforcement priorities – "specifically focusing on dangerous criminal aliens and employers who cultivate illegal workplaces by breaking the country's laws and knowingly hiring illegal workers." The guidance identified I-9 audits as the most important administrative tool in building criminal cases and bringing employers into compliance with the law.

On the heels of the updated worksite enforcement guidance, ICE launched the single largest wave of I-9 audits to date. On July 1, 2009, ICE served 652 employers across the country with NOIs – more NOIs issued in one day than the total number of NOIs issued for the entire prior fiscal year (503).

With this week's second wave of I-9 audits, ICE has demonstrated its resolve to hold employers fully accountable for complying with the I-9 record-keeping requirements and to deter the employment of unauthorized workers.

Employers' Bottom Line:

The increased focus by ICE on I-9 audits means all employers should ensure that they obtain appropriate documentation of the identity and employment

eligibility of all newly hired employees, and that they maintain the required records for the requisite period of time. Failure to do so can result in significant monetary liability and, in some cases, criminal penalties. Now, more so than ever, it is critical for employers to ensure full compliance with the I-9 recordkeeping requirements.

If you have questions about the I-9 requirements or how to prepare for the potential of an I-9 audit, please contact Charles Roach, croach@fordharrison.com, 612-486-1631, or any member of Ford & Harrison's Business Immigration practice group.