

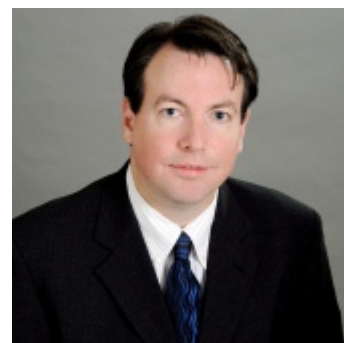
# Construction Alert: Protecting Your Company From The Federal Crackdown On Form I-9s

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November 10, 2011

The numbers are staggering. As of Sept. 17, U.S. Immigration and Customs Enforcement (ICE) instituted 3,015 administrative and criminal investigations and issued 2,393 Notices of Inspection for Form I-9 compliance in 2011. That's a 375 percent increase from 2008.

It's no secret that the construction industry has experienced tough years. If declining revenues have hurt your business, what about a six-figure fine? Or even worse – a steep fine coupled with criminal indictments of the owner and the people involved in hiring and supervising employees? Regardless of your company's financial performance, mitigating the risks of noncompliance is an absolute necessity.



## ***An Expensive Case Study: Ketchikan Drywall Services***

Ketchikan Drywall Services is a small- to mid-sized commercial and residential drywall contractor. On average, the company employs between 35 and 40 workers. When projects end, workers are laid off and are recalled as other work arises, provided the employee maintains satisfactory performance.

When the company was investigated, Form I-9s had been completed for many of its employees. But they weren't perfect. And in today's world, the government expects near-perfection on Form I-9s – a standard Ketchikan quickly learned when the company was slapped with a \$286,624 fine.

## ***5 Lessons From The Ketchikan Experience***

First and foremost, proper completion and maintenance of Form I-9s is critical. When ICE inspects documents, its forensic auditors examine every aspect of each form and assess monetary penalties depending on whether the errors are substantive or technical/procedural.

Second, view each I-9 as a liability document. With proper guidance you can reduce or eliminate the potential liability – but proceed with caution and consider counsel from an attorney. If done improperly, error corrections can easily lead to more serious charges against the company.

Third, gather mitigation factors and arm yourself with a properly performed internal audit before you get served with a Notice of Inspection. These mitigation factors may result in a lesser fine if errors are found and will play a big part in the legal defense of your company, should the need arise.

Fourth, get your staff trained on the proper completion of Form I-9s. Implement a policy that addresses basic compliance issues and how to handle Social Security and other types of “no match” letters. Learn the pros and cons of e-Verify and how to handle the possibility of the imputation of subcontractor immigration problems.

And fifth – and most importantly – be proactive but careful. Experience has shown that internal audits without legal guidance can lead to more serious charges, so seek counsel from a lawyer before you begin. Most will agree that a few hours of your attorney’s time will be worth far more than a steep fine or – even worse – jail time.

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