

**THE IMMIGRATION EDGE**

**Immigration Inspections: ICE Audits  
Employers' Immigration Documents**

11/24/09

The Department of Homeland Security recently stepped up enforcement actions against employers with inspections of I-9 forms and other documents. On November 19, 2009, Homeland Security's enforcement agency, Immigration and Customs Enforcement ("ICE"), issued Notices of Inspection and some subpoenas to 1,000 employers across the United States, seeking to review the following types of documents:

- Employment Eligibility Verification (I-9) forms;
- Form 1099 for independent contractors;
- Information about obtaining workforce through staffing agencies;
- Social Security Administration notices;
- Employee rosters;
- Payroll reports;
- State unemployment insurance reports; and
- Business licenses.

**Were the employers randomly selected or targeted for I-9 audits?**

Decisions of where to send the notices were based on investigative leads. All companies targeted are in "critical infrastructure" industries, with a broad sweep that includes energy, commercial facilities and telecommunications, agriculture, utilities, transportation, shipping, banking, health, information technology and food processing.

These actions demonstrate that ICE is serious about holding employers accountable for complying with the law. Rather than conducting raids as it has done in prior years, ICE intends to continue to refocus efforts on employers and not employees, although it will not refrain from detaining and arresting foreign nationals who lack evidence of authorization to work in the United States.

**What happens when an employer provides the requested documents?**

After reviewing the documents, ICE will provide written notification of the inspection results to the audited party. Following are a list of such notices:

- Notice of Inspection Results. Also known as a "compliance letter," used to notify a business that they were found to be in compliance.
- Notice of Suspect Documents. To advise the employer that based on a review of the I-9 forms and documentation submitted by the employee, ICE has determined that an employee does not appear to be unauthorized to work in the United States, and to advise the employer of the possible criminal and civil penalties for continuing to employ this individual. ICE provides the employer and employee an opportunity to present additional documentation to demonstrate work authorization if they believe the finding is in error.
- Notice of Discrepancies. To advise the employer that based on a review of the I-9 forms and documentation submitted by the employee, ICE has been unable to determine work eligibility. The employer should provide the employee with a copy of the notice, and give the employee an opportunity to present ICE with additional documentation to establish their employment eligibility.
- Notice of Technical or Procedural Failures. To identify technical violations identified during the audit and to give the employer 10 business days to correct the forms. After 10 business days, uncorrected technical and procedural failures will become substantive violations.
- Warning Notice. Issued in circumstances where substantive verification violations were identified, but circumstances do not warrant a monetary penalty and there is the expectation of future compliance by the employer.
- Notice of Intent to Fine ("NIF"). May be issued for substantive, uncorrected technical, knowingly hire and continuing to employ violations. In instances where a NIF is served, charging documents will be provided specifying the violations committed by the employer. The employer has the opportunity to either negotiate a settlement with ICE or request a hearing before the Office of the Chief Administrative Hearing Officer ("OCAHO") within 30 days of receipt of the NIF. If the employer takes no action after receiving a NIF, ICE will issue a Final Order. If a hearing is requested, OCAHO assigns the case to an Administrative Law Judge and sends all parties a copy of a Notice of Hearing and government's complaint, thus setting the adjudicative process in motion.

ICE last conducted such a sweeping issuance of Notices of Inspection on July 2, 2009, resulting in 562 Notices. The enforcement actions resulted in fines against 61 of the employers, totaling \$3 million, with 267 more still being considered for fines.

### **What should employers do to avoid I-9 audits?**

Companies in critical industries might not be able to avoid I-9 audits. However, all employers should attempt to be prepared to respond to government requests for evidence of compliance with immigration law by adopting policies for completing and retaining I-9 forms and other documentation.

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