

# Employer • Alert

*July 2009*

## **U.S. EMPLOYERS FACE CRACKDOWN FOR UNAUTHORIZED WORKERS ICE ISSUES MASS I-9 AUDIT INITIATIVE**

Six hundred and fifty-two employers across the nation were surprised this past Wednesday, July 1, 2009, with Notices of Inspection issued by the U.S. Immigration and Customs Enforcement (ICE) announcing its intent to inspect their hiring records for compliance with employment eligibility laws. The inspection notices alerted the employers and business owners that their records would be subject to audit in three business days. The move came as part of the Obama administration's initiative to combat illegal immigration by taking stricter enforcement measures against employers who hire unauthorized workers.

The 652 audit notices issued on this one day outnumbered the total sum of such notices sent out during the entire 2008 fiscal year. Last year, ICE administered only 503 audits, choosing instead to focus its efforts on individuals unlawfully present inside U.S. borders. The government is now shifting gears and going after employers who are deemed to entice large scale illegal immigration. The new enforcement strategy aims at reducing the demand for unauthorized employment, which in turn will reduce the lure of unlawful presence in the U.S.

The audits were not issued at random. The selected businesses were identified "as a result of leads and information obtained through other investigative means," according to the press release on the matter. ICE did not release the names of the businesses selected for audit, citing the ongoing investigations.

Employers are required to complete and retain an Employment Eligibility Verification Form I-9 for each individual hired for employment in the United States. As part of the audit, ICE will inspect the employer's Forms I-9 for current and former employees and is anticipated to compare those forms to payroll and other hiring records to confirm compliance with the laws and regulations, namely that the employer has a complete and accurate Form I-9 for every U.S. worker.



If an employer is found to be in violation of employment eligibility laws, the consequences depend upon the nature of the violation. While minor technical violations will most likely only result in a warning and instruction on how to properly complete the Form I-9, more significant violations may lead to civil fines ranging from \$110 to \$1,100 per paperwork violation and \$375 to \$3,200 for each instance of employment of an unauthorized individual. Employers face further criminal fines and imprisonment if found to have committed a pattern or practice of unlawful employment. The outcome of the audit could also result in a referral to the Connecticut Department of Labor to investigate possible violations under state wage and hour laws in the event that such violations appear evident.

An employer is not held strictly liable for the employment of unauthorized workers so long as the employer has completed its obligations in good faith. Employers have the obligation to timely and accurately complete a Form I-9 for every worker by reviewing and recording documents that verify identity and work eligibility. Documents must reasonably appear genuine on their face and relate to the person presenting them upon hire. If a new hire presents documents that meet these criteria, however, the employer is not liable if the underlying documents prove to be fraudulent or are the result of identity theft.

In view of these stricter enforcement measures by ICE, it is advisable for employers to conduct their own internal audit of the Forms I-9 and employment eligibility verification procedures so they are prepared if they receive an inspection notice.

#### QUESTIONS OR ASSISTANCE?

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