



IMMIGRATION PRACTICE

# ALERT

## ICE I-9 INSPECTIONS OF EMPLOYERS NATIONWIDE CONTINUE

By Alka Bahal

The Department of Homeland Security's Immigration and Customs Enforcement agency (ICE) has issued its newest batch of 1,000 Notices of Inspection (NOIs) to employers of all sizes and in every state in the nation. These audit notices emphasize businesses related to critical infrastructure and key resources pursuant to the agency's I-9 Enforcement and Compliance policy. They notify business owners that ICE will perform a comprehensive review (i.e. audit) of their hiring records (specifically form I-9s and associated documents) to determine compliance with employment eligibility verification laws.

This is the largest I-9 inspection action since ICE issued 1,000 NOIs in November 2009 but, unlike the 2009 action, ICE did not publicize its most recent enforcement effort. (For more information on previous inspection actions see our [earlier Alerts on this topic.](#)) Nationally, from fiscal year 2009 to date, ICE has initiated I-9 inspections against nearly 4,000 businesses resulting in nearly \$7 million in fines.

NOIs often request not only I-9 documentation, but payroll records, copies of immigration filings, copies of Social Security Administration communications requesting corrections, information on independent contractors and tax records and other company related information. The employer must ordinarily produce all documentation for ICE within three business days of receiving the notice. Reports indicate, however, a lack of uniformity in this wave of NOIs and document

demands vary, even within a single ICE office, with respect the timelines provided for responding to the NOI, whether I-9s were requested for current and/or terminated employees and the types of documents requested.

All employers across the country are required to have an I-9 on file for all employees to verify their identity and authorization to work in the United States. The form requires that employers execute this process upon hiring, review and record the individual's original, valid identity documents and determine whether those documents reasonably appear to be genuine and related to the individual. The rules governing the I-9 process changed on April 3, 2009, and new versions of form I-9 were issued in April and August of 2009. For more information see our [earlier Alert on this topic.](#)

Civil fines for form I-9 violations can range from \$110 to \$16,000 per violation, with repeat offenders receiving higher penalties. In determining penalty amounts, ICE considers five factors to either enhance or mitigate fine amounts: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers and history of previous violations.

This newest round of audits on employers clearly indicates that the I-9 inspection is a permanent and important part of DHS' immigration enforcement policy that targets employers rather than employees via the workplace raids of the past.

**What should you do if the government wants to inspect your I-9s:**

- Call your immigration attorney immediately. The window for responding to ICE is short and it is critical that documents submitted in response to the notice be well-organized and presented in the best light possible.
- Don't consent to an immediate inspection if agents show up without warning; you have up to three days to respond/submit documents.
- Don't let agents take original records; provide copies.
- Don't allow officers to talk with any employees or company officers before you call your attorney.
- If Department of Labor agents show up for an inspection without notice, decline the inspection. They'll notify USCIS.
- Don't panic and try to correct or otherwise repair your records without the assistance of qualified immigration counsel.

Employers who have not yet received an inspection notice should take steps to protect themselves in advance. Two key tools in ensuring IRCA compliance are private internal audits and specialized training. Employers should conduct private internal audits with the assistance of a qualified immigration professional to review I-9 documents and correct any errors in advance of an inspection. This type of periodic audit can not only uncover problems in time to be corrected before the imposition of sanctions, but can also demonstrate the employer's good faith efforts to comply with IRCA's verification

requirements, a mitigating factor in ICE's penalty determination process. Because private I-9 audits can be performed over time and at the employer's convenience, it is less arduous for a company than the three-day audit period forced by an inspection notice.

Many problems with I-9s stem from simple misunderstandings of the procedures and requirements. This can easily be rectified by having a qualified attorney train your personnel about proper procedures. Because the work environment and employee culture changes with some frequency, along with periodic legal changes impacting the I-9 process, refresher training courses for already "expert" personnel are also recommended.

Although employers can select from a variety of service providers to meet their I-9 audit and training needs, legal professionals with experience with immigration, employment and labor law are better equipped to handle IRCA compliance issues, including audits, training and formal inspections. Fox Rothschild provides companies of all sizes with IRCA compliance training seminars and confidential, internal I-9 audits.

For more information regarding the information in this Alert, or if you require assistance with your company's immigration or employment issues, including IRCA compliance, I-9s, audits, visa processing or comprehensive immigration strategy, please contact Alka Bahal, co-chair of Fox Rothschild's Corporate Immigration Practice Group, at 973.994.7800 or [immigration@foxrothschild.com](mailto:immigration@foxrothschild.com), or any member of our Immigration or Labor & Employment department practices.



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