



Compliance Audit Alert - July 1, 2009:

What to do if you receive an ICE Notice of Inspection

All employers should be aware that today Immigration and Customs Enforcement (ICE) announced an initiative to audit over 650 US companies for I-9 compliance through administrative Notices of Inspection (NOIs). Each Special Agent in Charge (SAC) has been instructed to target businesses with headquarters in their Area of Responsibility (AOR). The companies receiving these NOIs have been hand-selected by ICE SAC offices, and represent a cross-section of industries and sizes: small (less than 20 employees), medium (20-100 employees) and large (more than 100 employees).

The new I-9 initiative is part of the government's ongoing effort to hold employers more accountable for immigration compliance. Furthermore, this initiative follows recent steps to heighten the stakes for employers: the government has significantly increased civil fines for employers and it has also started using debarment procedures to restrict those companies that are non-compliant from securing federal contract work. If you receive a NOI, you only have three days in which to respond and produce your I-9s, so you must act quickly. Here are a few things you should keep in mind:

- You should immediately inform your General Counsel or company lawyer;
- Under their guidance, begin to gather requested documents, including I-9 supporting documentation, and make copies for the company to reference during the subsequent ICE investigation that will follow the NOI;
- Review payroll lists, and identify any active employees who do not have an I-9 on file;
- Additionally, you should contact experienced compliance

Why Compliance Matters

The Problem

Too often, businesses find it challenging to navigate the ever-growing complex rules, regulations and compliance laws at both the federal and state level. Legal responsibilities that at one time went unenforced are now being enforced in unprecedented ways. Business executives that don't heed this new intensity of enforcement may in fact find their bottom line impacted, or in some cases, find themselves personally liable.

The Solution

ICS provides a comprehensive auditing service to review existing compliance systems with a keen awareness of the vulnerabilities often exploited. For businesses that discover problems with their systems, ICS addresses those problems and recommends protocols to fully manage the issues. We also build layered compliance systems that include I-9 verification policies, E-Verify protocols, training modules, immigration related antidiscrimination protocols, No-Match policy and immigration compliance manuals to ensure businesses are prepared to meet the rigors of governmental oversight. When appropriate, ICS partners with legal counsel to actively defend companies involved in government investigations.

professionals who can help develop a plan of action and can walk you through the necessary steps to comply with the NOI and investigation. It is important to talk to experienced professionals in order to ensure that you take advantage of the limited time frame to submit your I-9s and that there are no missteps in handling the investigation either internally or by ICE;

- Review I-9s to identify issues of concern and make appropriate corrections where appropriate. Although corrections can be made to I-9's in many circumstances, some companies may create bigger issues for themselves if erroneous corrections are made without experienced guidance;
 - o Depending on the nature of the error, the employer may be able to make some necessary I-9 corrections, while employees must make other corrections. Examples of appropriate actions may include completing I-9s for active employees who did not previously have an I-9 on file; filling in missing information, including date of hire and date of birth; and completing Section 3 where employees have expired work authorizations;
- Ensure that you abide by all anti-discrimination provisions and treat employees appropriately. Because employers are often under pressure during this three day period, on some occasions, companies may unintentionally violate the anti-discrimination provisions of IRCA;
- When providing the documents to ICE, ensure that the ICE agent acknowledges in writing the exact number of original I-9s that have been relinquished; and
- Consider proactive compliance steps, as appropriate.

The first days after receiving a NOI are critically important. If you receive a NOI, you should take all necessary steps to comply, but you must also ensure your that documents are in order. Simply turning over the requested documents to the ICE without first reviewing, making copies, and making authorized corrections is always unwise.

These are just a few first steps. It is imperative that an ICE investigation is handled correctly from the start. As the former leadership team at Immigration and Customs Enforcement (ICE), our firm brings firsthand knowledge, judgment, and expertise to assist you with this type of matter. For more information on this issue please contact the author, **Julie Myers Wood** at Julie@iandcsolutions.com. Ms. Myers Wood is the **former head of Immigration and Customs Enforcement**.

** The information provided above is generalized and does not constitute legal advice. For particular advice tailored to your circumstances, please contact ICS. **



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