

ICE Issues New Wave of I-9 Inspection Notices

November 7, 2011

U.S. Immigration and Customs Enforcement (ICE) recently issued a wave of Notices of Inspection (NOI) to selected employers requiring the employers to provide I-9 forms, payroll information, and business information for inspection. Employers should treat these NOIs seriously. In almost all cases, these NOIs were issued based on tips or leads; they were not issued randomly. Employers can face significant civil monetary penalties for Form I-9 compliance failures, and egregious situations can lead to criminal prosecution.

Recommended action items upon receipt of an ICE NOI:

- Devote the resources needed to gather the requested information.
- Make a quick assessment of your company's exposure to potential sanctions for deficiencies in your Form I-9 paperwork, both for paperwork errors and for any missing I-9 forms.
- Depending upon your company's unique circumstances, assess the desirability of taking limited remedial action to correct Form I-9 deficiencies before providing the requested material to ICE.
 - Prior to taking any remedial action, you should consult with knowledgeable counsel about the implications, parameters, and proper procedures for effecting I-9 corrections at this stage.
- Consider whether it is necessary to request an extension of time in which to respond to the ICE NOI. By law, employers have three days in which to provide the required material; however, in some instances ICE may be amenable to a reasonable extension of time.
- Treat the NOI as the initiation of an adversarial process, which it is, but make every effort to maintain a professional and cooperative relationship with ICE.

Sanctions for Form I-9 paperwork violations can range from \$110 to \$1,100 per individual form, regardless of whether the individual is a lawful worker. Additional potential civil and criminal exposure could result from knowingly employing unlawful workers and from knowingly aiding and abetting, harboring, or transporting unlawful workers. Individual culpability might be ascribed to the company as a whole. Publicly traded companies face additional exposure under Sarbanes-Oxley and Dodd-Frank rules, in addition to potential shareholder suits if immigration compliance violations result in a loss of stock value.

Morgan Lewis Can Help

The Immigration Compliance Practice at Morgan Lewis advises companies of all sizes, from start-ups to Fortune 50 industry leaders, on the creation, maintenance, and defense of immigration compliance programs. We regularly represent clients in the context of ICE inspections and employer sanctions, and in litigation before the relevant courts. Our cross-disciplinary practice includes leading immigration attorneys, former federal prosecutors, and former senior federal government officials. Whatever the scope of your challenges, we have the experience and resources to assist you.

For more information, or if you have any questions regarding the issues discussed in this Immigration Alert, please contact any of the following attorneys:

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Now Available: *AILA's Focus on Immigration Practice Under AC21*

Written by Eleanor Pelta and A. James Vázquez-Azpiri, *AILA's Focus on Immigration Practice Under AC21* provides invaluable insight on the effect AC21 has had on the H-1B visa category. For more information, please visit www.ailapubs.org/ac21.html or call 1.800.982.2939 to order a copy.

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