

A solid yellow right-angled triangle pointing towards the top-left corner.

**BLOGS**  
Immigration

## The ICE Man Cometh . . . With a Notice of Intent to Audit

You may have noticed a slight chill in the air a couple of weeks ago when, for the second time this year, the U.S. Immigration and Customs Enforcement Agency notified 1,000 employers that it plans to inspect their I-9 records. The Notices of Intent to Audit (NOI) that were issued on June 15, 2011, bring the total number of companies audited by ICE to more than 2,300 for this fiscal year, which already surpasses last year's record of 2,196. According to a statement issued by ICE, the employers affected by this most recent round of audits were selected primarily based on tips and leads, though there remains a focus on companies that provide critical infrastructure services, including construction, agriculture, water treatment, healthcare, and transportation industries. Whether your company has received a NOI or you've been lucky enough to avoid one until now, it is important to understand what a NOI is and how it may impact your organization.

The audit process begins with the service of a NOI by an ICE agent. In addition to I-9 documentation, the NOI typically requests other information, including a list of all current and former employees, hire and termination dates, payroll records, quarterly tax statements, copies of any immigration filings, copies of any Social Security communications (including No-Match letters), Articles of Incorporation, lists of Federal contracts, and information regarding independent contractors. The timeline to respond to a NOI is short, usually three (3) business days, although ICE is sometimes willing to provide a short extension of time to respond.

Once the requested documentation has been turned over to ICE, a Forensic Auditor reviews the records and notes any deficiencies in the employer's I-9 records. If any technical or procedural violations (e.g. failure to ensure that the employee puts a date on Section 1, or failure to provide the business name and address in Section 2), are found, the employer is notified and allowed 10 days to correct the errors. Unfortunately, however, employers do not get a chance to correct substantive I-9 violations, which include failing to reference a document number or relying on documents not listed as acceptable identity or employment authorization documents. The difference between the two types of violations is that a substantive violation is one that is more likely to lead to the hiring of an unauthorized worker.

Employers are generally fined between \$110 and \$1100 per substantive or uncorrected technical violation (the amount depends on the number of total violations), though the total fine may be adjusted up or down based on the application of certain aggravating or mitigating factors. In addition, if, during the course of an audit, an employer is found to have knowingly hired or continued to employ unauthorized workers, it will face additional fines as well as possible criminal sanctions and debarment from future government contracts.

So, what is the takeaway? As the saying goes, an ounce of prevention is worth a pound of cure. Don't wait for ICE to darken your doorway before you take I-9 compliance seriously. We advise employers to implement an effective and workable compliance plan for their organizations, including conducting regular I-9 audits, making any necessary corrections to forms, responding appropriately and timely to Social Security Administration No-Match letters, and training staff who complete I-9s on proper procedures.