



Immigration Law Update: Fall/Winter 2009

December 2, 2009

ICE Serves 1,000 Employers with Notices of Inspection for I-9 Records

U.S. Immigration and Customs Enforcement (ICE) recently announced that it had issued Notices of Inspection (NOIs) to 1,000 employers across the country—alerting business owners that ICE will audit their hiring records to determine compliance with employment eligibility verification laws.

The 1,000 employers that received audit notices were selected for inspection stemming from investigative leads and intelligence and because of the organization's connection to public safety and national security.

These audits involve a detailed review of an employer's Forms I-9, which employers are required to complete and retain for each individual hired in the U.S. I-9 forms require employers to review and record each employee's identity and work eligibility document(s) and determine whether the document(s) reasonably appear to be authentic and related to that individual.

Audits may result in civil penalties and commence criminal prosecution proceedings for employers who knowingly violate the law. Monetary penalties for knowingly hiring and continuing to employ unauthorized individuals range from \$375 to \$16,000 per violation, with repeat offenders receiving penalties at the higher end. Penalties for substantive violations, which include failing to produce a Form I-9, range from \$110 to \$1,100 per violation. In determining penalty amounts, ICE considers five factors:

1. Size of the business;
2. Good faith effort to comply;
3. Seriousness of violation;
4. Whether the violation involved unauthorized workers; and
5. History of previous violations.

"ICE is focused on finding and penalizing employers who believe they can unfairly get ahead by cultivating illegal workplaces," said ICE Assistant Secretary John Morton in a press release. "We are increasing criminal and civil enforcement of immigration-related employment laws and imposing smart, tough employer sanctions to even the playing field for employers who play by the rules."



For further information about I-9 inspection process and sanctions, please see the Form I-9 Inspection Overview or visit the Immigration and Customs Enforcement Web site.

USCIS Conducting Unannounced Employer Site Visits

Gray Plant Mooty attorneys have been seeing an increase in immigration-related enforcement activities recently. One of these activities includes personal visits to employers by the U.S. Citizenship and Immigration Services (USCIS) Office of Fraud Detection and National Security (FDNS), which is commencing an assessment of the H-1B temporary worker program.

For the most part, these H-1B site visits have been unannounced. The site visits generally occur at the H-1B employer's principal place of business and/or at the H-1B nonimmigrant's work location, as indicated on the Form I-129, Petition for a Nonimmigrant Worker. We have received notification that the visits typically are short and that questions such as the following have been asked:

- When did the H-1B employee commence work?
- What is the job description for the position?
- What is the employee's work schedule?
- What salary is the employee being paid? (To confirm the salary, the officer may request a copy of the H-1B employee's W-2 from last year.)
- What type of business is the company involved in and for how long?
- How many employees does the company have?
- Where are the company's offices located?

The employer may request that its immigration attorney be present during the site visit. However, FDNS officers will not typically reschedule a site visit so that an attorney may be present. FDNS has stated that it will allow the attorney to be present by phone, if requested. If you receive a site visit, please feel free to contact Mark Mathison or Casey Nolan.

Rescission of the Social Security "No-Match Rule"

The Department of Homeland Security (DHS) has published its final rule concerning rescission of the Social Security "No-Match Rules." After further review, DHS has determined to channel its enforcement efforts toward the employment of aliens who do not have work authorization in the U.S. via increased compliance through improved verification, including participation in E-Verify, ICE Mutual Agreement Between Government and Employers (IMAGE), and other programs. This follows the DHS proposal to rescind the "No-Match Rules" on August 19, 2009.

If you have any questions about the topics covered in these articles or other immigration law issues, please contact a member of the Gray Plant Mooty Immigration Law practice group.

This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.