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## Is That ICE Knocking At Your Door?

As part of the Obama administration's new worksite enforcement strategy, U.S. Immigration and Customs Enforcement (ICE) just announced the launch of a robust, new I-9 audit initiative yesterday by issuing Notices of Inspection (NOIs) to 652 businesses nationwide. The NOIs instruct companies that they have the standard three (3) days to present the [Forms I-9s](#) of both active and terminated employees to ICE. ICE will be inspecting the companies' hiring records to determine whether or not they are complying with the Immigration Reform and Control Act of 1986 (IRCA), as well as other immigration-related laws. During the [recent announcement of the change in worksite enforcement strategy](#), ICE told its field agents that I-9 inspections should be considered an important tool in the government's enforcement toolbox in an effort to support a renewed department-wide focus in targeting employers involved in the hiring of unauthorized workers and related criminal activity. Last year, ICE issued 503 NOIs in total; yesterday's announcement of 652 new inspections as we reach the halfway mark in 2009 confirms a change in strategy resulting in increased I-9 inspections and stepped up compliance focused on employers. This renewed zeal to utilize administrative tools, including civil monetary penalties, should have employers concerned as the stakes are high. Paperwork violation fines range from \$110 to \$1,100 for each violation and fines for substantive violations range from \$375 to \$16,000.

Under IRCA, employers are required to verify the identity and employment eligibility of each employee hired after November 6, 1986. This verification is done by completing and retaining a [Form I-9](#) for each individual hired.<sup>1</sup> Employers must review documents for each new hire and ensure the documents appear reasonably genuine prior to accepting them.

"The 652 businesses being presented with a NOI yesterday for a Form I-9 audit have been selected for inspection as a result of leads and information obtained through other investigative means," stated the [ICE press release](#). We believe these 652 companies were targeted because of the industry in which they are involved, were previously identified by ICE, or were targeted as a result of tips or a review of older social security mismatch data that had been done in 2007. Although the audits were initiated by ICE headquarters, the local Special Agents in Charge carefully selected each company in an effort to review businesses in various industries. We also understand that the sampling needed to include a cross-section of employers of different sizes, broken down as follows: 40 percent small (fewer than 20 employees), 40 percent medium (20 to 100 employees) and 20 percent large (more

<sup>1</sup> I-9s for terminated employees can be discarded within three years from the date of hire or one year from the date of termination **whichever is later**.

than 100 employees).

The I-9 inspections will likely be conducted very quickly as the turnaround time is rumored to be 30 days, although ICE has not confirmed this information. As explained above, the NOI will provide three (3) days for the employer to submit their I-9s for inspection. Due to the alleged tight timeline for completing the inspections, it is doubtful that extensions will be granted. Experienced ICE forensic auditors, along with field agents, will then conduct the reviews. Employers who receive these Notices must act quickly and diligently:

**“ICE is committed to establishing a meaningful I-9 inspection program to promote compliance with the law. This nationwide effort is a first step in ICE’s long-term strategy to address and deter illegal employment,” said Department of Homeland Security Assistant Secretary for ICE John Morton.**

IF YOU RECEIVE A NOTICE OF INSPECTION:

- You should **immediately** contact the general counsel (or the manager/owner at a smaller company);
- You should retain experienced immigration counsel;
- Gather I-9s and supporting documentation;
- 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;
- Review I-9s to identify issues of concern;
- Make corrections, where appropriate;
  - NOTE: although corrections can be made to I-9s, in some circumstances companies may create more liability if erroneous corrections are made without experienced guidance
- Abide by all anti-discrimination provisions including ensuring that existing employees are not arbitrarily requested to submit new or alternative documents to update a Form I-9;
- Confirm the “chain of custody” for the company’s documents have the ICE agent acknowledge, in writing, the exact number of original I-9s that have been relinquished; and
- Consider proactive compliance planning where appropriate.

“Under this strategy, ICE is focusing its resources on the auditing and investigation of employers suspected of cultivating illegal workplaces by knowingly employing illegal workers. The nationwide initiative launched yesterday is a direct result of this new strategy,” said ICE in its press release.

Without regard to the size of your company, receipt of a Notice of Inspection should be taken very seriously. It is critical that you act immediately and secure a team of experienced compliance experts to guide you through the ICE inspection process.

Greenberg Traurig’s Business Immigration and Compliance Group has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws, and employers’ responsibilities upon receiving Social Security Administration “No-Match” letters.

**This *GT Alert* was written by [Dawn M. Lurie](#). Questions about this information can be directed to Ms. Lurie ([luried@gtlaw.com](mailto:luried@gtlaw.com); 703.903.7527) or to your immigration professional listed below.**

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