

APR. 2018 EMPLOYMENT LAW UPDATE

ICE Aims to Visit 5,000 Workplaces in 2018 - Are You Prepared?

All United States employers, regardless of size, must ensure proper completion of Form I-9 (“I-9”) for each individual they hire. The I-9 is used to verify the identity and employment authorization of individuals. Failing to complete an I-9, or completing a deficient I-9, can result in civil fines and/or criminal penalties.

The Immigration and Customs Enforcement (“ICE”) agency enforces U.S. immigration laws. ICE has set a goal to visit at least 5,000 U.S. workplaces in 2018 to conduct immigration inspections. The goal seems attainable because President Trump’s budget proposal included funding to allow ICE to hire over 2,000 additional officers, and earlier this year ICE raided over 120 businesses in just 5 days. ICE typically inspects a workplace in one of two ways: through an audit, or through a raid.

An ICE audit is initiated by sending an employer a Notice of Inspection, which asks the employer to produce I-9s for inspection within three days. Employers may also be asked to turn over a list of current employees, wage and hour reports, payroll records, E-Verify records, and related business information.

A raid occurs when the agency obtains a search warrant to conduct an on-site investigation. Then, ICE officials will visit an employer’s worksite, access the premises, and conduct a search of personnel and records. Undocumented workers or individuals who interfere with the investigation may be arrested. Otherwise, once ICE has the documentation it requested, whether through an audit or raid, ICE will review the materials to determine whether a violation has occurred. If a minor violation is found, ICE may issue a notice of technical or procedural failure and provide the employer with an opportunity to fix the issue. If more serious violations are found, ICE may issue a warning notice without assessing a monetary penalty, or if the agency believes the employer knowingly hired unauthorized individuals, it may issue a notice of intent to fine. Criminal charges may also result if ICE believes there is a pattern or practice of violations.

There are three proactive steps any employer can take to be in a better position for an ICE inspection. First, an employer should develop an I-9 compliance program by ensuring all necessary staff members are trained on how to properly complete and retain an I-9 (which includes storing completed I-9s together in an easily accessible location), and what actions can be taken if an employee may not have authorization to work in the United States. Second, an employer should ensure its I-9 compliance program is up-to-date and being followed. Third, regular internal I-9 audits will help identify any issues and allow an employer the opportunity to remedy errors in a timely manner.

If an employer receives either a Notice of Inspection, or is served with a search warrant, legal counsel should be contacted immediately.

If you have any questions related to this information or if you would like assistance conducting an I-9 internal audit or responding to an ICE audit, please contact Jennifer S. Walther or Robert Finn Jensen of Mawicke & Goisman, S.C.

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