



LEGAL ALERT

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SNELL & WILMER

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Preparing for an ICE Inspection

This past week, Immigration and Customs Enforcement (ICE) issued 652 Notices of Inspection on unsuspecting employers across the country, well more than it issued during all of last fiscal year. This nationwide initiative is a direct result of new enforcement guidelines issued on April 30th, 2009, which altered the department's focus from one of workplace raids to pick up undocumented workers, to one of criminally prosecuting businesses that hire undocumented workers.

These are not random I-9 audits, but rather are targeted investigations based on leads and other information obtained by ICE. Unfortunately, many of these "leads" undoubtedly come from disgruntled former employees, unsatisfied customers, and even competitors. These audits differ from random I-9 audits in other ways as well. Instead of simply requesting to review the employee roster and corresponding I-9s, the current requests from ICE are much more detailed and comprehensive covering areas ranging from identification of I-9 training for employees, to requests for state and local business licenses, as well as quarterly state unemployment tax records. Moreover, ICE typically gives employers only a few days to compile the requested information.

Because the most recent ICE initiative reaches across industry lines and encompasses all sizes of employers, all companies need to take steps to ensure that they are currently in compliance with all state and federal immigration laws and that they have taken proactive steps to put themselves in the best defensive position possible if they receive a Notice of Inspection from ICE. The following is a list of preventative steps all companies should immediately consider taking, if they have not done so already:

1. Ensure that you have an I-9 for each current employee and for each employee who was terminated within the last three (3) years (you are required to retain I-9s for terminated employees for one (1) year from termination or three (3) years from date of hire, whichever is longer);



2. Have an outside 3rd party conduct an I-9 audit. Using in-house resources is not advised as they will be checking their own work and most likely will not recognize their own errors;
3. Make corrections on I-9s as problems are uncovered;
4. Adopt an "Immigration Compliance Policy" that also contains a procedure for handling "mismatch" letters or calls from state and federal agencies;
5. Adopt a written procedure for the completion of I-9s, including a reverification system, storage, and document destruction processes;
6. Ensure that the company individuals who have I-9 responsibility have received training on the I-9 process;
7. Join E-Verify;
8. Confirm that the company is paying unemployment taxes on all employees by comparing your employee roster with quarterly unemployment tax submissions;
9. Determine if the company has received any notices from the Social Security Administration or other state or federal agencies notifying the company of incorrect social security numbers;
10. If you have any notices as they relate to #9, follow up to ensure that the employees are no longer employed by you;
11. Keep a record of employees you have terminated or rejected due to the determination that they were not legally authorized to work;
12. Address any problem areas before you receive the Notice of Inspection.

Taking the above steps will help your company be better prepared in the event that ICE serves you with a Notice of Inspection.

If you have any questions on the subject of this article or would like more information, please contact the authors or another Snell & Wilmer attorney at 602.382.6000.



Rebecca Winterscheidt

602.382.6343

bwinterscheidt@swlaw.com

Becky Winterscheidt advises employers concerning all aspects of personnel administration, including employment discrimination, wrongful discharge, breach of contract, labor relations, etc. She represents employers and individuals in the area of immigration law by obtaining immigrant and nonimmigrant visas.