

# **Compliance Audits and Worksite Investigations on the Increase in the United States**

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With the inauguration of a new President, Americans wondered what the Obama administration would do regarding the very badly broken immigration system in the United States. Would large work force raids continue? Would the estimated twelve million undocumented workers continue to be apprehended one by one and put into detention facilities, as they had in increasing numbers during the Bush administration? Or would this new administration push first for comprehensive immigration reform that includes a methodology for making undocumented workers legal? In early summer, 2009, the answer came when both the administration and Congress moved aggressively to focus on increased immigration enforcement in the workplace, with Immigration and Customs Enforcement (ICE) announcing that it would be auditing an unprecedented number of businesses. This renewed focus on compliance is occurring in advance of immigration reform, which means that employers in certain vulnerable sectors will be at risk of losing significant portions of their workforce. Additionally, ALL employers have now been forced to realize the critical need for taking immigration compliance seriously.

It is therefore more essential than ever for businesses to develop solid compliance policies that include training and audit procedures. Not only can ICE impose significant fines and other civil sanctions for immigration violations; it can bring criminal charges against owners, managers, supervisors, and human resource employees. Charged offenses include such things as harboring, knowingly hiring undocumented workers,

smuggling, document fraud, money laundering, and worker exploitation. Employers are well advised to develop immigration worksite enforcement response plans as part of their compliance policies.

Employers do not have full control over everything that occurs within the workplace, but they can take proactive steps to ensure that they are in compliance with the hiring requirements under the Immigration Reform and Control Act of 1986 (IRCA). Simply put, IRCA requires all employers to complete an Employment Verification Form I-9 for all employees hired since November 6, 1986. This form requires documentation establishing employment eligibility and must be completed within three days of hire. The I-9 process doesn't detect identity theft or falsified documents, and many undocumented workers in the U.S. have acquired documentation sufficient to pass I-9 scrutiny. Employers cannot, however, engage in the "knowing hire" of an undocumented worker even if the I-9 requirements are met. To discourage employers from discriminating against foreign workers, IRCA also imposes sanctions on employers who refuse to hire an individual based on ethnicity or national origin.

An I-9 audit can easily turn into a full blown worksite investigation if the employer's I-9 files are not in order, so being in compliance is the first line of defense. It is therefore more important than ever for all employers to have an effective I-9 policy in place. Establishing a comprehensive and standard written policy is key, because it helps to establish good faith compliance with IRCA. In order to ensure consistency, employers should designate an overall I-9 compliance administrator charged with centralized oversight, management, and training regarding the compliance program. Additionally, the company's leadership should engage in an overall corporate culture of compliance;

too often compliance has been relegated to lower level employees and not taken seriously. Employers must make sure not give ICE any cause to expand I-9 audits into worksite investigations, particularly where there may be suspected lurking issues such as identity fraud. Even though employers may be innocent in such situations, a worksite investigation is extremely disruptive, expensive, and can lead to negative publicity. Furthermore, certain employers are vulnerable to losing large sections of their work forces.

We are hopeful that the Obama administration will focus its attentions on comprehensive immigration reform as well as compliance, as only then will the system be fixed. In the meantime, however, there is no question that immigration worksite compliance has been pushed to the top of the list of priorities for employers. While they don't have control over whether they will become ICE's next target, they can take proactive measures to come into strict compliance and avoid fines, penalties and possibly even worse consequences.

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