

## IMMIGRATION

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## Government Audits of Employers for Immigration Compliance Likely to Increase in 2010

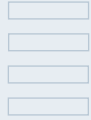
On November 19, 2009, U.S. Immigration and Customs Enforcement (“ICE”) announced that 1,000 employers associated with the nation’s critical infrastructure were issued and served “Notices of Inspection,” to require each employer to produce its hiring records to allow ICE to determine whether the employer is in compliance with employment eligibility verification laws. On December 9, 2009, ICE announced that it fined a company in Detroit more than \$40,000 after it determined that the company had failed to complete nearly 100 employment eligibility forms for its employees. These two events demonstrate that the Obama Administration is acting on its stated intention to enforce the U.S. immigration laws by focusing on employers and imposing tougher sanctions on employers who violate immigration-related employment laws.

U.S. employers are required to maintain employment eligibility forms, or “I-9 Forms,” for every employee, and must review a new employee’s documentation to prove eligibility to work and prepare the needed Form I-9 within three days of hiring. These records must be retained by an employer for as long as the employee remains with the employer, and for either three years after the date of hire or one year after termination, whichever is later. ICE is entitled by law to request that an employer produce these Form I-9 records for its inspection, and will require that an employer produce such records within three business days of issuing its notice for inspection. After ICE reviews the Form I-9 records provided by the employer, ICE will allow an employer ten business days to correct technical violations, but it also has the authority to impose fines on employers for whom it has found substantive violations. “Substantive violations” are defined to include failure of an employer to review employment eligibility documents for an employee, or failure to date the Form I-9 as having been completed within three business days of hire. “Technical violations,” on the other hand, would include failure to fill out the Forms I-9 with information regarding the documents used to verify employment eligibility, if copies of the documents were retained with the forms.

If an employer is contacted by the U.S. Government regarding inspection of its I-9 Forms, it may wish to contact counsel to assist it in responding to the inspection notice. Also, counsel may be helpful in addressing notices of the Government’s

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inspection results, addressing discrepancies, and if needed, either providing representation at an administrative hearing regarding alleged compliance violations, or reaching a settlement regarding alleged violations and penalties.

Given the Government’s increased attention on employers in its enforcement of immigration laws, it is in every employer’s best interest to ensure that its employment eligibility records have been properly maintained. Employers should regularly review their procedures to ensure that at the time of hire, employment verification and completion of the Form I-9 is properly conducted, documented, and maintained. Usually it is too late to do so once an employer receives a “three-day notice.” ■

*Hiscock & Barclay, LLP, has experienced attorneys and highly trained paralegals who can help employers in Form I-9 review and in conducting internal audits. Please feel free to contact us if you would like to discuss this further with Eric W. Schultz and Gretchen P. Aylward, our attorneys in our Immigration Practice Area.*

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