DEFENDING EQUITY INITIATIVE

Key Concepts re Immigration Audits and Raids in the Workplace

Disclaimer: This document is current as of June 2025, but immigration laws and policies are subject to frequent change. This material is provided for informational purposes only and does not constitute legal advice. Individuals should consult with a qualified immigration attorney for guidance specific to their situation.

BACKGROUND CONCEPTS AND TERMS

Immigrations and Customs Enforcement ("ICE"): The federal law enforcement agency that enforces immigration laws and enforces illegal immigration and cross-border crime. ICE is part of the Department of Homeland Security ("DHS"). ICE has two primary and distinct law enforcement components, Homeland Security Investigations ("HSI") and Enforcement and Removal Operations ("ERO"):

- HSI is the primary investigative arm of DHS. HSI agents investigate violations of national security laws including but not limited to, immigration and identity documents via Form I-9 audits.
- ERO primarily deals with the deportation and removal of illegal immigrants, is among the most public and contentious function of ICE.

ICE Worksite Enforcement Action ("ICE Raid"):

- An ICE raid or "worksite enforcement action" occurs when ICE agents visit an employer's worksite (typically, unannounced) in order to possibly question, detain, arrest, or warn about specific employees.
- An ICE raid must be sanctioned by a judicial search warrant, which means the agency has obtained approval from a judge / judicial official to conduct a search and/or seizure at the employer's premises within the scope of the warrant.
- Unlike audits (see below), there is no three-day period to gather documents, and ICE agents will not wait for your attorney to arrive before conducting a search.

Form I-9:

- The Form I-9 is used by the U.S. Citizenship and Immigration Services (USCIS) to establish that an employee is eligible to work in the United States.

- All U.S. employers must properly complete Form I-9 for every individual they hire for employment in the United States. This includes citizens and noncitizens. Only certain individuals are exempt from I-9 requirements:
  - Individuals hired on or before Nov. 6, 1986, who are continuing in their employment and have a reasonable expectation of employment at all times. (Some limitations to this exception apply.) Also excepted are individuals hired for employment in the Commonwealth of the Northern Mariana Islands (CNMI) on or before Nov. 27, 2009.
  - Individuals employed for casual domestic work in a private home on a sporadic, irregular or intermittent basis.
  - Independent contractors or individuals providing labor to you if they are employed by a contractor providing contract services (for example, employee leasing or temporary agencies).
  - Individuals not physically working in the U.S.
- Both employees and employers (or authorized representatives of the employer) must complete the form.
- Employees and personnel responsible for I-9 review should carefully review the Instructions for Form I-9 Employment Eligibility Verification, available at: https://www.uscis.gov/sites/default/files/document/forms/i-9instr.pdf.
- Ensure that you are using the latest version of Form I-9.

I-9 Audit:

- An I-9 audit is a review of an employer's I-9 forms to ensure that they are accurate and that all employees are authorized to work. The audit can be conducted by federal immigration officials (typically, HSI or ICE) or voluntarily by the employer (or the employer's outside legal counsel).
- If HSI initiates an I-9 audit, it will first issue the employer a *Notice of Inspection*, which asks you to produce certain I-9s for inspection within three (3) business days.
- In addition to I-9 forms for current and recently terminated employees, you will most likely be asked to turn over a list of current employees, quarterly wage and hour reports, payroll records, E-Verify confirmations (if the company uses the system), and related business information, including the business owner's Social Security Number. You may also be asked to provide supporting documentation for certain employees (i.e., passport, work authorization

documents, etc.), as well as documentation from the employer to establish it is a bona fide entity (i.e., articles of incorporation, list of all active employees, etc.).

- I-9 Forms must be retained for a minimum of three years after the date of hire, or one year after the date of termination—whichever is later—and must be kept in the employer's records.
- The I-9 audit typically consists of an HSI investigator verifying that your I-9 forms have been properly completed, based on a review of your documents to ensure that they are timely completed, they are correctly and entirely filled out, and that the associated documents establishing identity and employment eligibility are legitimate. The process may take as little as two weeks or as long as three years.
- Once the review is complete, the agency will inform you of its findings, which may be one or more of the following:
    - A ***Notice of Inspection Results*** (also known as a "Compliance Letter") notifying you that you are in compliance with applicable employee eligibility verification requirements.
    - A ***Notice of Suspect Documents*** regarding an employee's authorization to work, which means that the agency believes the immigration documentation provided by the employee does not relate to the employee or is otherwise invalid, and advising of potential penalties if you continue to employ that individual. You will be given an opportunity to provide additional documentation to show proper authorization to work for that employee.
    - A ***Notice of Discrepancy*** indicating that work eligibility cannot be determined for a certain employee, with an opportunity for that worker to provide documentation showing employment eligibility or face termination from employment.
    - A ***Notice of Technical or Procedural Failures*** identifying technical or procedural failures found during the inspection of Form(s) I-9 and giving you at least ten (10) business days to correct the forms. After this correction period ends, uncorrected technical or procedural failures will become substantive violations.

- A ***Warning Notice*** outlining substantive verification violations that were identified, but there is an expectation of future compliance by the employer. However, a Warning Notice should not be issued in the following circumstances: instances where: (1) the employer was previously the subject of a Warning Notice or a Notice of Intent to Fine; (2) the employer was notified of technical or procedural failures and failed to correct them within the allotted 10-business day period; (3) the employer had a 100% failure to prepare and present Form(s) I-9; (4) the employer hired unauthorized workers as a result of substantive violations; or, (5) there is any evidence of fraud in the completion of Form I-9 (e.g., backdating) on the part of the employer.
- A **Notice of Intent to Fine ("NIF")** may be issued for substantive violations, uncorrected technical or procedural failures, knowingly hire violations, and/or continuing to employ violations. An NIF will also be accompanied by charging documents specifying the alleged violations committed by the employer.
  - You are entitled to a hearing before an Administrative Law Judge at the Office of the Chief Administrative Hearing Officer (OCAHO). This request **must** be made within 30 calendar days of receipt of the NIF.
  - If a written request for a hearing is **not** timely received, the agency will issue a Final Order. There is no appeal from a Final Order. If a written request for a hearing is timely received, the employer may request to engage in settlement negotiations with the agency regarding the charges or fine(s) imposed prior to a hearing before OCAHO. If the employer and the agency reach an agreement, the agency will not file a complaint with OCAHO. However, if the employer and the agency do not reach an agreement, the agency will file a complaint with OCAHO. Additional information about OCAHO may be found at justice.gov/eoir/office-of-the-chief-administrative-hearing-officer.