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How Companies Can Avoid Getting ICE Burn

7/19/2022

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Practices: Immigration

As the enforcement arm of the U.S. Department of Homeland Security (DHS), the primary directive of the U.S. Immigration and Customs Enforcement (ICE) is to enforce U.S. immigration laws and protect the U.S. from cross-border crimes that pose a national security and public safety threat. ICE has more than 20,000 law enforcement and support personnel in more than 400 offices worldwide. Homeland Security Investigations (HSI) is one of ICE's three operational branches that advances its mission. HSI is the investigative arm of ICE which has broad authority to investigate a wide array of violations including terrorism, narcotics smuggling, transnational gang activity, human smuggling and trafficking, cybercrime, identity and benefit fraud, and worksite and employment violations, among many others. To combat unlawful employment and reduce opportunities that help undocumented noncitizens gain employment in the U.S., HSI is tasked with conducting worksite enforcement investigations of U.S. companies. This is done through an administrative inspection process whereby an employer is served with a Notice of Inspection which requires the employer to produce its Forms I-9, Employment Eligibility Verification (I-9) for all employees.

For business owners that have not heard of an I-9 or have been avoiding it, it is critical to get familiar with DHS's I-9 rules and regulations. While the form looks simple enough, errors and omissions in completing the form can result in hefty penalties being assessed against an employer by ICE. The Immigration Reform and Control Act (IRCA) requires all U.S. employers to verify the identity and employment eligibility of all individuals hired in the U.S. after November 6, 1986 and sets forth criminal and civil sanctions for violations related to noncompliance. For current employees, employers are required to maintain original I-9s for inspection, and for former employees, the I-9 must be maintained for a period of at least three years from the first day of employment or one year from the date employment ends, whichever is longer. When ICE initiates an audit of a company's I-9s, the employer has three business days to produce the requested forms. If ICE finds substantive and technical violations, an employer may receive a monetary fine on each violation. Employers who are found to have knowingly hired or continued to employ unauthorized workers are required to cease the unlawful activity and may be civilly fined and/or criminally prosecuted. To determine the base fine amount, the number of substantive violations/uncorrected technical or procedural failures and knowingly hire/continue to employ violations will be divided by the number of I-9s that should have been presented for inspection. The percentage from this calculation is the violation percentage that will determine the minimum and maximum civil penalty base fine amount. With current penalties ranging up to \$2,507 for substantive violations for a small company with 50 employees, an employer could be looking at fines well over \$125,000.

To learn more about how to properly complete an I-9, visit the U.S. Citizenship and Immigration Services' I-9 Central website: <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9>. For further inquiries about ICE audits or how to conduct an internal I-9 audit to become compliant with immigration laws, please contact an immigration attorney at Masuda Funai.