



Tips To Prepare Your Company For An I-9 Audit

Insights

5.05.14

The Immigration Customs and Enforcement division (ICE) of the Department of Homeland Security, continues to issue Form I-9 Notices of Inspection to businesses across the nation. In fiscal year 2012, ICE served over 3,000 Notices to businesses, resulting in over \$12 million in fines. Additionally, ICE made 520 criminal arrests tied to worksite enforcement investigations. These criminal arrests involved 240 individuals who were owners, managers, supervisors, or human resources employees.

The Notices of Inspection require employers to allow ICE to inspect their I-9 forms to determine compliance with employment eligibility-verification laws. Once the Notice of Inspection has been issued, the targeted employer has three days to provide ICE with the company's I-9 forms to be reviewed. In addition to I-9 forms for current and recently terminated employees, employers will be asked to turn over payroll records, list of current employees, and information about the company's ownership.

Civil penalties for errors on the I-9 form can range from \$110 to \$1,100 per violation. Civil penalties for knowingly hiring and continuing to employ unauthorized workers range from \$375 to \$3,200 per violation for first time violations. In determining penalty amounts, ICE considers five factors:

- 1) The size of the business;
- 2) Good-faith efforts to comply;
- 3) The seriousness of the violation;
- 4) Whether the violation involved unauthorized workers
- 5) Any history of previous violations.

Here are 12 tips to help protect your company and limit exposure for I-9 violations:

1. Use the correct form. U.S. Citizenship and Immigration Services recently released a new version of the I-9 form. Beginning May 7, 2013 only the 03/08/13 version of the I-9 form will be accepted.
2. Complete the form in a timely manner. For a new hire, the employee must complete Section 1 before starting work on the first day. You must complete Section 2 and the Certification by the end of the third business day.
3. Ensure that the Preparer/Translator Section is completed if the employee received assistance completing Section 1 of the I-9 form.

completing Section 1 of the I-9 form.

4. Don't accept any expired document.
5. Avoid discrimination or document abuse. When completing the I-9 process, do not require the employee to provide specific documents or more documents than minimally required.
6. Don't play detective. If a document presented by the employee is on the List of Acceptable Documents, reasonably appears to be genuine, and relates to the person presenting it, you may accept that document to complete Section 2 of the I-9 form.
7. Reverify expiring work-authorization documents before they expire and do not allow any employee to continue to work after a work-authorization document expires.
8. Don't reverify U.S. passports or passport cards, Permanent Resident Cards, or List B Identity documents.
9. Keep I-9 forms in a separate binder for current employees and another for terminated employees. Do not keep I-9 forms in employee personnel files.
10. Train the individuals in your company who complete the I-9 process.
11. Conduct self-audits. Correctable errors on the I-9 form should be fixed, the change should be initialed and dated, and the words "Per Self Audit" should be placed beside the correction.
12. Know your rights. If ICE appears to review your I-9 forms and conduct an audit, insist on a written Notice of Inspection and your right to have three business days before you turn over your original I-9 forms.

It's clear from recent events that ICE will continue auditing employers' I-9 forms to ensure that *all* employers are complying with immigration laws. Creating a culture of compliance and auditing your company's forms is the best way to prepare your company for an ICE I-9 audit.

For more information, contact the author at JCook@fisherphillips.com or 404.231.1400.

Related People





Jessica T. Cook

Partner

404.240.4151

Email