



## **IMMIGRATION UPDATE: ICE RAMPS UP EMPLOYER**

### **I-9 AUDITS IN THE SOUTHEAST**

*This bulletin provides a general update on employment issues for subscribers. Please contact us if you have any questions about these decisions or about their effects on your business.*

The Department of Homeland Security, through its Immigration and Customs Enforcement (“ICE”) division, has really stepped up its efforts in auditing employers’ compliance with the employment verification requirements established by the Immigration Reform and Control Act of 1986. ICE announced that more than 1,000 audits were initiated in November 2009 and announced March 2, 2009, that audit notices were served on more than 150 businesses in Alabama, Louisiana, Mississippi, Arkansas and Tennessee. These audits are purportedly “random” rather than the “targeted” audits, based suspicion of illegal conduct or being a member of a specific industry group, that were common in the past.

We are currently assisting clients in responding to the audit requests. When an employer receives an audit notice, it has a narrow 72-hour window to respond to the audit with all of its I-9 forms as well as back-up data (employee lists and payroll information) sufficient to verify that all of the I-9’s required have been produced. Failure to comply with production within 72 hours can constitute a violation of the I-9 document retention requirements. If you receive an audit notice or subpoena, please contact counsel immediately and do not respond to the audit without first consulting counsel. We have a limited opportunity to insure that the submitted material is in good format to make the very best possible first impression on ICE. ICE is imposing significant fines on non-compliant employers so employers must address audit requests in a serious manner.

For employers who did not receive a notice, please note that the audit trend is now and will continue to be a staple of ICE’s worksite enforcement efforts. Now is a good time to perform an internal audit of your I-9 processes. You are not required to report the results of an internal audit to ICE or any other governmental agency and the

audit results will afford you an opportunity to both correct any deficiencies in the I-9's that you currently possess as well as correct any procedural issues on a going forward basis. We discussed aspects of this in our February 17, 2010 webinar *Immigration Update: I-9/E-Verify Compliance* that is available in archived version at <http://www.lehrmiddlebrooks.com/events.htm>. The self-audit corrections will assist an employer in establishing a good-faith defense in the event the employer is later audited by ICE. We are available to assist in structuring an I-9 audit or for any other questions that employers might have regarding the employment verification process.

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