

# Keeping ICE off your Plant's Lines this Winter

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Worksite investigations have continued to put a freeze on some businesses, especially targeting those that have been known to hire undocumented workers. In order to avoid the chill that has been placed on production and plant operations across the U.S., it's time to defrost the mystery behind Form I-9.

### **What Is Form I-9?**

The Immigration Reform and Control Act of 1986 (IRCA) mandates that as of November 6, 1986, all U.S. employers are required to have a Form I-9, Employment Eligibility Verification, on file for each newly hired employee — citizen and non-citizen alike. This form, which verifies the identity and employment eligibility of the newly hired individual, must be signed by the employee on or before the first day of hire and completed by the employer or its representative within three business days of the employee's first day of work. Failure to do so can result in significant civil and criminal penalties.

In an effort to reduce the illegal employment of undocumented workers, U.S. Immigration and Customs Enforcement (ICE) is aggressively conducting random audits of businesses' I-9s.

In the event of an audit, employers have three days to present the documents requested by the subpoena attached to the Notice of Inspection (NOI). Typically, this requires presenting the I-9s for all current employees, as well as for terminated

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employees who fall within the I-9 document retention requirements, a detailed payroll run, certain employment tax records, answering a questionnaire regarding I-9 compliance and procedures, and providing information regarding the ownership of the company.

Special Agents and Forensic Auditors assigned to the case are responsible for examining the I-9s for paperwork violations and to determine if the employer is knowingly hiring and/or continuing to employ undocumented workers. If the I-9s are not found to be in compliance, significant civil and criminal penalties may be assessed. On the civil side of the ledger, these can range anywhere from \$110 per paperwork violation found on the I-9, up to \$16,000 for the unlawful employment of aliens, per person. Charges of criminality can result in jail time as well as forfeiture of property.

Therefore, it has become increasingly important to be aware of the dire nature of the ICE worksite inspections and to be prepared in the event of an audit. U.S. businesses should adopt compliance policies that will enable their businesses to “keep it cool” within the confines of this law.

### **Why Get the 411 on Form I-9**

In 2008 alone, ICE made over 1,100 criminal arrests tied directly to the enforcement of such investigations. These arrests included business owners, managers, and supervisors who were later convicted of criminal offenses associated with the knowing hire of undocumented workers, Social Security fraud, money laundering, and identity theft.

In addition, ICE took over 5,100 undocumented workers into custody based on immigration violations revealed during worksite investigations. If you think that your plant is safe from this massive deep-freeze, think again.

A record number of 652 NOIs were served on American companies throughout the country in June 2009. In September of 2010, ICE issued federal government subpoenas and NOIs to an additional 500 businesses nation-wide. This 500 business sweep is part of an April, 2010 announcement by ICE that it has implemented a new, comprehensive strategy to reduce the demand for illegal employment and protect employment opportunities for the nation’s lawful workforce. Under this strategy, ICE is focusing its resources on the auditing and investigation of employers suspected of cultivating illegal workplaces by knowingly employing undocumented workers.

### **ICE Audits Companies Large & Small**

In July 2009, ICE and the Butler County Sheriff’s Office announced that they reached a \$40,000 fine settlement with the Krispy Kreme Doughnut Corporation for violations of immigration laws. This settlement came more than two years after ICE initially conducted an I-9 inspection of the doughnut manufacturer’s plants in Cincinnati as a result of receiving information from the Butler County Sheriff’s Office that the company had employed dozens of illegal aliens.

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Retailing fashion giant Abercrombie and Fitch announced this fall that it was fined over \$1 million as part of a settlement reached with Homeland Security and ICE for a multitude of Form I-9 violations. It was during a November 2008 I-9 audit that ICE discovered the store's lax policy for maintaining I-9s. It is worthy to note that this massive fine was levied without any findings that the company was guilty of criminal violations with regard to knowingly hiring and employing undocumented workers.

Two manufacturing employers were arrested in September after an ICE investigation revealed that they were allegedly hiring unauthorized workers. The owner and Vice President of Masters in Metal, Inc., in Oxnard, California were arrested for what ICE investigators say was their unlawful employment of 16 people with fake green cards. After the investigation, ICE told Masters in Metal to fire these individuals. Investigators subsequently found that two workers continued to remain on the payroll after the owner instructed them to get "good" Social Security numbers. The employers were charged with knowingly hiring undocumented aliens and face up to six months in prison.

Los Angeles ICE agents also arrested the manager of a California personnel agency that hires workers for jobs at local factory warehouses. The manager, who works at Parker Personnel, Inc., was taken into federal custody on September 14, 2010. ICE is accusing him of not only hiring undocumented aliens but also providing those workers with counterfeit immigration documents to mask their unlawful employment.

### **So What Can You Do?**

President Obama made it clear that under his administration there would be a shift in immigration enforcement from the workers to the employers. Under this strategy, ICE is focusing its resources on the auditing and investigation of employers suspected of cultivating illegal workplaces by knowingly employing undocumented workers.

As an employer, it is increasingly important to be aware of the dire nature of ICE worksite inspections, and to be prepared in the event of an audit. U.S. businesses should seek guidance from their immigration counsel and establish compliance policies that will enable them to withstand ICE's cold nature. Best practices should include that you:

- Perform internal audits regularly. An internal audit is the best way to detect and correct errors and ensure that I-9s have been completed properly for your workforce. It may also demonstrate a "good faith effort" to remain compliant which could spare you serious penalties in the event of a government audit.
- Avoid employment practices that are considered discriminatory. Employees must be treated equally regardless of their citizenship or immigration status, national origin, or native language. Many well-intentioned actions can be

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considered discriminatory; for example, employers may not ask to see work authorization documents before hiring on the ground that someone seems “foreign” or is not an American citizen.

- Establish a “tickler” system to alert you to fast approaching deadlines for I-9 completion as well as approaching work authorization expiration dates.
- Provide I-9 training for your staff, including all human resource personnel as well as other employees who are in the field.
- Appoint a compliance officer. Task one individual who has ultimate responsibility for I-9 completion and the authority to speak with ICE, should the need arise.
- Contact competent counsel. When in doubt, ask an expert.

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