

Looking Into the Immigration Crystal Ball: Critical Topics for 2009 and 2010

- Trends in Immigration Compliance
- I-9 Completion and Retention
- Responding to SSA “No-Match” Letters
- Electronic Employment Verification (E-Verify)

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Trends in Immigration Compliance

- In April 2009, Secretary Napolitano, issued guidance outlining that ICE will focus its resources in the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers.
- She further stated that ICE will use all available civil and administrative tools, including civil fines and debarment, to penalize and deter illegal employment.

Trends in Immigration Compliance

Fiscal Year 2008 ICE Accomplishments

- ICE made more than 1,100 criminal arrests tied to worksite enforcement investigations and 5,100 administrative.
- Of those arrested, 135 were owners, managers, supervisors or human resources employees facing charges including harboring or knowingly hiring illegal aliens.
- The remaining foreign nationals are facing charges including aggravated identity theft and social security fraud.

Trends in Immigration Compliance

Increase in criminal arrests

Fiscal Year	Criminal Arrests	Administrative Arrests
2002	25	485
2003	72	445
2004	160	685
2005	176	1,116
2006	716	3,667
2007	863	4,077
2008	1,103	5,184

Trends in Immigration Compliance

- CIS recently conducted an audit of several H-1B petitions. The audit was conducted by the U.S. CIS, at the request of Senator Chuck Grassley, R-Iowa. The USCIS sampled 246 cases from a total of nearly 97,000 approved, denied or pending petitions between October 2005 and March 2006. Out of the 246 cases, USCIS found 51 cases, or nearly 21 percent, were either fraudulent (33 cases) or had technical violations (18 cases) -- defined as violations ranging from failure to pay the stated prevailing wage to placing the employee in a location other than the stated place of employment.
- Senators Grassley and Durbin introduced legislation in 2007 that includes mandatory annual audits -- which are not currently performed by the USCIS.
- Chris Rhatigan of the DHS added that the department is implementing new procedures to help tighten loopholes, such as increasing site visits to verify the presence of a petitioner's business address.

Trends in Immigration Compliance

- In February 2009, in coordination with the U.S. Attorney's office in Iowa, the USCIS was involved in a six-state raid of companies allegedly abusing the H-1B program. This raid resulted in a 10-count federal indictment against New Jersey-based Vision Systems Group. The firm was indicted on conspiracy and mail fraud charges. VSG faces a forfeiture of \$7.4 million gained through their alleged offenses.



I-9 Preparation and Compliance

I-9 Completion and Retention

Who needs to complete an I-9?

- **Form (I-9) must be completed by all new employees hired by an employer**
- **Not required to complete I-9s for employees hired before November 7, 1986**
- **But if choose to complete one I-9 for an employee hired before November 7, 1986, must do for all hired before November 7, 1986**

I-9 Completion and Retention

Which I-9 Form should be used?

- **Use (Rev. 02/02/2009) version. Check lower right corner to confirm correct version used.**
- **Spanish version of I-9 Form can only be used in Puerto Rico**
- **I-9 Form may be reproduced provided both sides are copied. The instructions must also be available to all employees completing the form.**

I-9 Completion and Retention

When is the I-9 completed?

There are 3 major sections to this form.

- **Section 1 – On or before the first day of paid work (when the employees' payroll begins)**
- **Section 2 – Must be completed within 3 business days of the first day of paid work**
- **Section 3 – Should be left blank when first completed. This section is only completed if it is necessary to re-verify an employee's employment authorization**

I-9 Completion and Retention

How is the I-9 completed?

- **Employees must present an original document or documents that establish identity and employment eligibility within three days of starting their job. Employees can choose which document(s) they want to present from the list of acceptable documents.**

■ I-9 Completion and Retention

How is the I-9 completed?

- **The employer must examine the original document(s) presented by the employee and complete Section 2 of the I-9 form.**
- **Employers must accept any document(s) presented by the employee which appears on its face to be genuine and related to the person presenting them.**

■ I-9 Completion and Retention

How is the I-9 completed?

- **Section 2 needs to be completed and signed by the employer's representative.**
- **Be sure to fill in the date employment begins, complete business name and address, and name and title of person completing the form.**

I-9 Completion and Retention

How long must an employer keep the I-9?

- **Employers must retain an I-9 for the later of:**
 - **Three years after the date of hire,****or**
 - **One year after the end of employment.**



Social Security No-Match Letters

What is a “No-Match” Letter?

- **“No-Match” = SSA “Employer Correction Request or ICE “Notice of Suspect Documents”**
- **ICE’s interpretation: If employer receives a letter and nothing is done to resolve the “no-match” by the employer or employee that is evidence that the employer has constructive knowledge that the person does not have employment authorization.**

What Must an Employer do per August 2007 Rule?

Steps that would comprise an employer's "reasonable response":

- Prompt check of the records for typos and clerical errors;
- If unresolved, a prompt request that the employee confirm the accuracy of the employer's records;

What Must an Employer do per August 2007 Rule?

- **If unresolved, a prompt request that the employee take up the problem with the proper authority; and**
- **If employee is not able to resolve the discrepancy within 90 days, the employer must complete a new I-9 and verify the employee's employment authorization and identity within an additional three days.**

What is the Status of the August 2007 Rule?

- **August 2007 rule was successfully challenged due to a failure to follow the Administrative Procedures Act as well as other Congressional mandates.**
- **Preliminary injunction issued on October 10, 2007**
- **Supplemental Proposed Rule issued in March 2008**

What did the Supplemental Proposed Rule Clarify?

- 1. Prompt = 5 business days after employer completes its internal records review. Employer does not need to wait to complete internal review to notify employee.**
- 2. August 2007 rule does not apply to workers hired before November 7, 1986 listed in a No-Match letter.**



The E-Verify Option And How It Works

E-Verify

State Laws Requiring It

- **E-Verify required by all employers: AZ, MS, SC***
- **Contractors: CO, GA, MN, MS, MO, OK, RI, SC, UT**
- **Public employers: AZ, GA, MN, MS, MO, NC, OK, RI, SC, UT**

What is E-Verify?

- **E-Verify is an online verification system which confirms employment authorization by checking Social Security Administration and CIS databases.**
- **Also called “Basic Pilot”**
- **Use of E-Verify is voluntary***

Who Must Use E-Verify?

Federal Contractors w/ E-Verify Clause

Subcontractors with Federal Contractor w/ E-Verify Clause w/ subcontract for

- **Commercial or noncommercial services or**
- **Construction**
- **Value of > \$3,000; and**
- **Includes work performed w/in U.S.**

Effective on or after 05/21/2009

E-Verify

What Federal Contracts are not required to use E-Verify?

Period of performance < 120 days

Work performed outside the U.S.

COTs¹ items (or COTs w/ minor modifications)

¹Commercially available off the shelf

What must Employer with Federal Contract with E-Verify Clause do?

Must enroll as Federal Contractor in E-Verify

Must use E-Verify to screen:

- **New hires**
- **Existing employees assigned to the Contract**

Must include E-Verify requirement in Subcontracts

Who qualifies as an Employee assigned to a Federal Contract that must be screened by E-Verify?

Employee hired after 11/6/1986

Directly performing work under the contract

Not Directly Perform Work if:

Support work (indirect or overhead)

Not perform any substantial duties applicable to the contract

Who Else Must Use E-Verify?

Companies that do business with the following government entities:

- **Colorado**
- **Georgia**
- **Oklahoma**
- **Tennessee**
- **Arizona and**
- **Mission Viejo, California**

Who Must Use E-Verify?

- Arizona requires all employers to use E-Verify as of 01/01/2008
- Mississippi will require phased-in usage
- Pending legislation in Missouri and South Carolina for all employers to participate in the E-Verify program

How does it change completing the I-9?

- **Employee must provide SS# in Part 1 of Form I-9**
- **All List B documents provided must have a photo**
- **If employee presents an I-551 (green card) or I-766 (work permit) you must make a copy of the document for the Photo Screening Tool**

What must an Employer do to use E-Verify?

- **Employers must sign a Memorandum of Understanding (MOU) in order to enroll in program.**
- **Register on-line at <https://www.vis-dhs.com/EmployerRegistration>**

How does E-Verify work?

- **Employment Authorized**
 - **Keep Case Verification Number**
- **SSA Tentative Nonconfirmation**
- **DHS Verification in Process**

What does DHS Verification Process Mean?

- **Case is automatically referred to DHS**
- **DHS will respond in 1-3 government workdays**
- **Check E-Verify status daily for result**

What must Employer do if receive Tentative Nonconfirmation ("TNC")?

- **Notify Employee of TNC**
- **Review Notice to Employee to determine if Contest or Not**
- **Employee & Employer must sign Notice**
- **Copy of Notice must be given to Employee & Original Notice filed w/ Form I-9**

What must Employer do if receive Tentative Nonconfirmation (“TNC”)?

- **If Not Contesting**
 - **Select Resolve Case**
- **If Contesting**
 - **Provide employee with Referral Letter**

What must Employer do if Employee Contests TNC?

- **Select Initiate Referral**
- **Select Notification to Employee-Referral to SSA/DHS**
- **Print, sign & date Referral Letter**
 - **Available in English or Spanish**

What must Employer do if Employee Contests TNC?

- **Ask Employee to sign Referral Letter**
- **Give copy of Referral Letter & advise employee to take the letter to the SSA/DHS office w/in 8 federal government work days**
- **File a copy of the Referral Letter with the I-9**

What are possible outcomes of Referral?

SSA:

- Employment Authorized
- SSA Final Nonconfirmation
- DHS Verification in Process
- DHS Tentative Nonconfirmation
- Review & Update Employee Data

DHS:

- Employment Authorized
- DHS Employment Unauthorized
- DHS No Show

Does Employer have to Terminate Employee if TNC issued?

- If Employee does not Contest TNC
 - Employee must be terminated
- If Employee does Contest TNC
 - Employee is allowed to continue to work while resolving TNC

When Must Employer Terminate?

- **Not Contest TNC**
- **SSA Final Nonconfirmation**
- **DHS Employment Unauthorized**
- **DHS No Show**

How Long must Employer with Federal Contract Clause use E-Verify?

- Entire period of performance of work

What Happens if Employer does not Comply with E-Verify?

- **DHS may terminate MOU and deny access to E-Verify**
- **DHS refer contractor/employer to suspension or department official**

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