

Worksite Enforcement and Raid Response Training



Presented by:

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Unprecedented Times in Immigration



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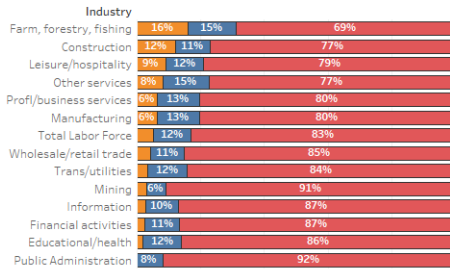
Certain Industries Must be Prepared

Unauthorized workers

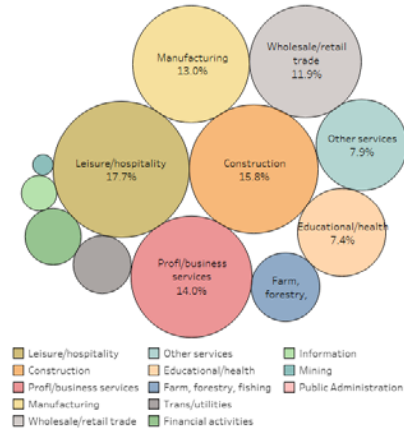
Here are the industries that rely most heavily on unauthorized workers, along with a breakdown of the industries that employ the biggest share of share of all unauthorized workers. SOURCE: Pew Research Center

■ Unauthorized Im. ■ Legal Immigrants ■ U.S.born

By industry employment



Share of all unauthorized workers



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President Trump's Executive Order

Executive Order
U.S. Department of Homeland Security
Washington, DC 20535



February 20, 2017

MEMORANDUM

FROM:

John Kelly

Secretary

SUBJECT:

Enforcement of the Immigration Laws to Serve the National Interest

E. Hiring Additional ICE Officers and Agents

To enforce the immigration laws effectively in the interior of the United States in accordance with the President's directives, additional ICE agents and officers are necessary. The Director of ICE shall—while ensuring consistency in training and standards—take all appropriate action to expeditiously hire 10,000 agents and officers, as well as additional operational and mission support and legal staff necessary to hire and support their activities. Human Capital leadership in CBP and ICE, in coordination with the Under Secretary for Management and the Chief Human Capital Officer, shall develop hiring plans that balance growth and interagency attrition by integrating workforce shaping and career paths for incumbents and new hires.

F. Establishment of Programs to Collect Authorized Civil Fines and Penalties

As soon as practicable, the Director of ICE, the Commissioner of CBP, and the Director of USCIS shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties which the Department is authorized under the law to assess and collect from aliens and from those who facilitate their unlawful presence in the United States.

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History of Worksite Enforcement

- **Immigration Reform and Control Act of 1986 (IRCA)** – made it unlawful to knowingly hire or continue to employ an unauthorized alien, and required all employers to examine documents from new hires to verify identity and work authorization. Created the I-9 requirement and employer sanctions
- **Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)** – further defined what documents are acceptable for employers to review to verify identity and employment authorization

ICE's Worksite Enforcement Strategy

- Criminal prosecutions
- Egregious worksite violators
- Administrative processes to encourage compliance
- Form I-9 inspections
- Designed to protect and target critical infrastructure sectors
- Transition to Trump

Form I-9 Audits and Related Violations

- Civil / Administrative
- Knowing hire of unauthorized aliens
- Knowingly continued employment of unauthorized aliens
- Verification violators

Knowing Hire of Unauthorized Aliens

- INA Knowingly Hiring Unauthorized Aliens
- INA § 274A(a)(1)(A)
- Employer has an affirmative defense if it complied in good faith with INA § 274A(b) – examined documents and properly completed the Form I-9
- ICE’s burden to prove the employer had actual or constructive knowledge of the alien’s unauthorized status *at the time of hire*
- The Code of Federal Regulations defines “knowing” as including not only actual knowledge but also knowledge that fairly may be inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition
- Ex. Employee sworn statements

Knowingly Continued Employment

- Knowingly Continued Employment of an Unauthorized Alien
- INA § 274A(a)(2)
- No affirmative defense
- Examples of employers acquiring knowledge of the alien's unauthorized status includes: expired EADs, non-action in response to Notice of Suspect Document letter, non-action in response to Social Security No-Match Letters, etc.
- Child Support collection, tax issues, individual correspondence or calls, anonymous tips

Civil Penalties for Knowingly Employing Unauthorized Workers, Document Fraud and Discrimination

Offense	Penalty ***
1st Level	\$539 - \$4,313
2nd Level	\$4,313 - \$10,781
3rd Level	\$6,469 - \$21,563

*** Fine amounts effective August 1, 2016

Form I-9 Paperwork Violations

- Form violations = \$216 - \$2,156***
- Violation percentage
- Technical vs. Substantive
- Enhancement matrix

*** Fine amounts effective August 1, 2016

Criminal Violations

- **Pattern and Practice** - \$3,000 for each unauthorized employee, 6 months in prison for an employer engaging in a pattern or practice of hiring, recruiting or referring for a fee unauthorized aliens
- **Transporting, Harboring, Inducing, Employing Smuggled Aliens**
 - INA § 274(a), 8 U.S.C. § 1324(a)
- **Inducement** - Any person or entity that encourages or induces an alien to enter, or reside in the United States, knowing or in reckless disregard of the fact that entry or residence is in violation of the law

Criminal Violations, cont'd

- **Harboring** - Knowing or in reckless disregard of the fact that the alien is in the United States in violation of the law, the employer conceals, harbors, or shields from detection, or attempts to conceal, harbor or shield from detection
- **Knowing Hiring Aliens for Employment** - An employer can be criminally liable if the employer employs at least **10 aliens within 12 months** with actual knowledge that the aliens are unauthorized **and** that the aliens were brought to the United States in violation of the smuggling statute
- **Document Fraud** - Prohibits forging or counterfeiting of any documents or the use or acceptance of such documents for the purpose of complying with the employment verification requirements

Pre-Inspection Tips

- Pre-employment inquiries “Less is more”
 - Employer should limit information it obtains before actual hiring regarding citizenship status or national origin
 - Permissible Inquiries (OSC)
 - “Are you authorized to work in the U.S.?”
 - Impermissible Inquiries
 - “Are you a U.S. citizen?”
- **I-9 Problems** – duty to investigate suspicious circumstances
 - An employer is not expected to be an expert, but if an employer has constructive knowledge that an employee is unauthorized to work, it must engage in further inquiry

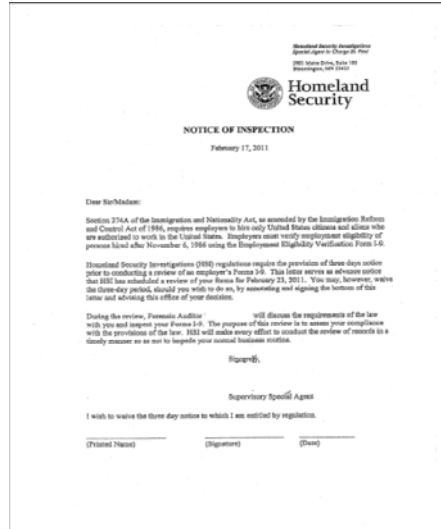
Form I-9 Retention

- Duration:
 - Length of employment plus 1 year, or
 - 3 years
 - (whichever is later)
- Use of separate files
 - Production for inspection
 - Re-verification
 - Auditing
 - Privacy
 - Purging
- Use 3 separate files
 - Current Employees – no re-verification required
 - Terminated Employees
 - Employees with expiring work authorization – verification required

What to Expect When Audited by ICE

- Process
 - ICE serves a Notice of Inspection (NOI) upon the employer – **3 business days** notice
 - Upon 3 days' prior notice employers are required to make Forms I-9 available for inspection
 - All current employees
 - All employees from the previous 3 years
 - All employees terminated within the last year
 - No subpoena or warrant is required but administrative subpoenas are often included with an NOI requesting further documentation
- After receipt of the I-9s, ICE agents and auditors conduct a Form I-9 audit

What to Expect When ICE Arrives



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What to Expect During an Audit

- Notice of Suspect Documents
 - Employee determined unauthorized
- Notice of Discrepancies
 - HSI unable to determine authorization or identity

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What to Expect During an Audit, cont'd

- Notice of Technical Procedural Failures
 - Errors HSI identifies as correctible
 - 10 business days to correct
 - Not fined if corrected, but fineable if not timely corrected

What to Expect From an Audit

- Final Actions
 - Warning Notice
 - Notice of Intent to Fine
 - Notice of Compliance – this is our goal!

Best Practices During an Audit

- Cooperate, cooperate, cooperate
- Immediately call Clete Samson (402) 661-0768
- Negotiation on Scope of Audit
- We will review requested I-9 forms and conduct an aggressive self-audit before we submit to ICE
- Compile requested documentation
- Copy all submitted forms and documents

We will have three business days to respond

Best Practices Before an Audit

- Train personnel on best practices for preparing Form I-9s
- Perform annual internal self-audits
- Ask questions of your immigration counsel on any issues that come up during I-9 completion

Best Practices for Completion

- Completion by / before first day
- Accept only the documents needed
- Photocopy employee documents used to meet Form I-9 requirements
- Calendar notification system for re-verifications and destruction
- Annual Internal Audit

Form I-9

Employment Eligibility Verification USCIS Form I-9 (Rev. 08/14/14)

Department of Homeland Security U.S. Citizenship and Immigration Services

START HERE. Read instructions carefully before completing this form. The instructions must be available during completion of this form. ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against non-authorized individuals. Employees CANNOT search which documents they will accept from an employee. The refusal to hire an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Attestation (Employee must complete and sign Section 1 of Form I-9 no later than the first day of employment, and not before accepting a job offer.)

Last Name (Family Name) First Name (Given Name) Middle Initial (Other Names Used if any)

Address (Street Number and Name) Apt. Number City or Town State Zip Code

Date of Birth (mm/dd/yyyy) U.S. Social Security Number Email Address Telephone Number

I am aware that federal law provides for implementation and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that each check one of the following:

A citizen of the United States.
 A non-citizen national of the United States. (See instructions.)
 A lawful permanent resident (Alien Registration Number/USCIS Number) _____
 An alien authorized to work until expiration date, if applicable, mm/dd/yyyy. Some aliens may write "NA" in this field. (See instructions.)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-54M Admission Number:

1. Alien Registration Number/USCIS Number: _____
 OR
 2. Form I-54M Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____
 Country of Issuance: _____

Some aliens may write "NA" on the Foreign Passport Number and Country of Issuance. (See instructions.)

Signature of Employee: _____ Date (mm/dd/yyyy): _____

Preparer or Translator Certification (To be completed and signed if Section 1 is prepared by a person other than the employee.)

I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and accurate.

Signature of Preparer or Translator: _____ Date (mm/dd/yyyy): _____

Last Name (Family Name) First Name (Given Name) Middle Initial (If any)

Address (Street Number and Name) City or Town State Zip Code

Form I-9 03/08/13 31 Page 1 of 9

Section 2. Employer or Authorized Representative Review and Verification

Employees of their authorized representative must complete and sign Section 2 on the first day of employment. They must physically examine one document from List A or List B and one document from List C and one document from List D as listed on the "List of Acceptable Documents" on the back page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.

Employee Last Name, First Name and Middle Initial from Section 1:

List A	List B	AND	List C
Identity and Employment Authorization	Identity	AND	Employment Authorization
Document Title	Document Title	Document Title	Document Title
Issuing Authority	Issuing Authority	Issuing Authority	Issuing Authority
Document Number	Document Number	Document Number	Document Number
Expiration Date (if applicable)	Expiration Date (if applicable)	Expiration Date (if applicable)	Expiration Date (if applicable)
Document Title	Document Title	Document Title	Document Title
Issuing Authority	Issuing Authority	Issuing Authority	Issuing Authority
Document Number	Document Number	Document Number	Document Number
Expiration Date (if applicable)	Expiration Date (if applicable)	Expiration Date (if applicable)	Expiration Date (if applicable)

3-B Remarks
Do Not Write in This Space

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)

Signature of Employer or Authorized Representative: _____ Date (mm/dd/yyyy): _____ Title of Employer or Authorized Representative: _____

Last Name (Family Name) First Name (Given Name) Employee's Business or Organization Name

Employee's Business or Organization Address (Street Number and Name) City or Town State Zip Code

Section 3. Reverification and Rehires (To be completed and signed by employer or authorized representative.)

List A or List B (if applicable) Last Name (Family Name) First Name (Given Name) Middle Initial (If any) Date of Birth (mm/dd/yyyy)

List C (if applicable) Document Title Document Number Expiration Date (if applicable)

I attest, under penalty of perjury, but to the best of my knowledge, this employee is authorized to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative: _____ Date (mm/dd/yyyy): _____ Title of Employer or Authorized Representative: _____

Form I-9 03/08/13 31 Page 2 of 9

Form I-9 Documents

- Form I-9 (Rev. 11/14/2016N)*
- Handbook for Employers (Form M-274)
(Rev. 01/22/2017)*

* Always confirm at www.uscis.gov/I-9Central

Problem Areas – Section 1

- Social Security Number
 - If the employer uses E-Verify, must be completed, but documentation proving the SSN may not be requested or required
- E-mail Address and Telephone Number
 - Voluntary but should not be left blank (N/A)

U.S. Social Security Number	E-mail Address	Telephone Number
<input type="text"/>	<input type="text"/>	<input type="text"/>

Problem Areas – Section 1, cont'd

- Status Box – ALL employees must complete

I attest, under penalty of perjury, that I am (check one of the following):

- A citizen of the United States
- A noncitizen national of the United States (See instructions)
- A lawful permanent resident (Alien Registration Number/USCIS Number): _____
- An alien authorized to work until (expiration date, if applicable, mm/dd/yyyy) _____. Some aliens may write "N/A" in this field. (See instructions)

For aliens authorized to work, provide your Alien Registration Number/USCIS Number OR Form I-94 Admission Number:

1. Alien Registration Number/USCIS Number: _____

OR

2. Form I-94 Admission Number: _____

If you obtained your admission number from CBP in connection with your arrival in the United States, include the following:

Foreign Passport Number: _____

Country of Issuance: _____

Some aliens may write "N/A" on the Foreign Passport Number and Country of Issuance fields. (See instructions)

3-D Barcode
Do Not Write in This Space

Problem Areas – Section 2

- Employer must print employee's name at beginning of Section 2

Section 2. Employer or Authorized Representative Review and Verification

(Employers or their authorized representative must complete and sign Section 2 within 3 business days of the employee's first day of employment. You must physically examine one document from List A OR examine a combination of one document from List B and one document from List C as listed on the "Lists of Acceptable Documents" on the next page of this form. For each document you review, record the following information: document title, issuing authority, document number, and expiration date, if any.)

Employee Last Name, First Name and Middle Initial from Section 1:

- Employer must examine original, unexpired documents

Problem Areas – Section 2, cont'd

- Blank First Day of Employment

Certification

I attest, under penalty of perjury, that (1) I have examined the document(s) presented by the above-named employee, (2) the above-listed document(s) appear to be genuine and to relate to the employee named, and (3) to the best of my knowledge the employee is authorized to work in the United States.

The employee's first day of employment (mm/dd/yyyy): _____ (See instructions for exemptions.)

Preparing and Retaining Electronic I-9s

- Employers may sign and retain the Form I-9 electronically
- Standards for electronic retention
 - 8 CFR § 274a.2(e)
- Documentation / Audit trails
 - 8 CFR § 274a.2(f)(1)(iii)
- Security standards
 - 8 CFR § 274a.2(g)(1)(iv)

Suspension and Debarment

- Administrative actions which render companies and individuals ineligible to receive federal contracts and federal benefits (e.g., FHA loans, trucking licenses, import/export licenses) if they lack “present responsibility”
- Basis – can be a criminal indictment, execution of a search warrant, a judgment and conviction (J&C), civil judgment or any other evidence which supports a basis for action
 - 48 C.F.R. Part 9, subpart 9.4, Debarment, Suspension and Ineligibility
 - For Benefits – 2 C.F.R. Part 180

Raid Response Plans

- Designate one ICE point person per shift
- Determine potential impact if employees are pulled off jobs – where is company most vulnerable to financial impact
- Develop ICE Response Phone Tree
- Know pre-raid signals
- Know the difference between raids with or without criminal search warrants
- Know how to handle media inquiries
- Develop Post-Raid Procedures for contacting employee family members and monitoring impact on your business

Worksite Enforcement and Raid Response Training

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Mr. Samson focuses his practice in immigration law, worksite compliance, employment law, and litigation. Having previously served for seven years as a federal trial attorney for the U.S. Department of Homeland Security, Mr. Samson has extensive knowledge of the Immigration and Nationality Act and the Immigration Reform and Control Act of 1986, including the proper preparation and maintenance of the Form I-9, the civil penalties for improper compliance, the civil and criminal penalties for hiring and employing individuals without employment authorization, worksite enforcement and other related issues. Mr. Samson also has experience in P-1B visas for internationally recognized entertainment groups performing in the United States. He has been a frequent presenter on a variety of immigration and worksite compliance issues.

Mr. Samson provides clients with key preventative advice to help them avoid liability associated with improper I-9 compliance; and if there has been an action filed by a governmental agency, he represents clients to ensure the government action is lawful and the matter is resolved fairly and expeditiously. Mr. Samson also has extensive knowledge in the areas of immigration removal and custody proceedings, criminal/immigration matters, and visa compliance. His experience includes commercial litigation.