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## New Dangers for Employers Who Hire Undocumented Workers

### ICE Changes Penalties from Slaps on the Wrist to Prison Times

Over the past year, Immigration and Customs Enforcement (ICE) has embarked on a game-changing type of enforcement strategy.<sup>1</sup> Under this new guidance, the criminal prosecution of employers is considered a priority of ICE's worksite enforcement strategy.

ICE is now fully committed to targeting employers, owners, corporate managers, supervisors and others in the management structure for criminal prosecution. As part of its investigation of a worksite, ICE will consider a variety of criminal offenses that may be present, including trafficking, alien smuggling, harboring, visa fraud, identification document fraud, money laundering and other criminal conduct.

As part of building criminal cases against employers, ICE will use administrative tools to advance the criminal cases and to support the imposition of civil fines and other available penalties, including debarment from federal contracts. The single most important administrative tool for information gathering at the start of a criminal investigation is the Notice of Inspection which is part of an I-9 audit.

It appears the new tactic is working. According to ICE, worksite investigations during 2010 have resulted in the filing of 180 criminal charges against employers. This is an increase of 30 percent from 2008. In addition, over 2,200 employers have been audited for I-9 compliance in the past year and more criminal cases are likely to

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result.

## What should an employer do in light of ICE's enforcement priorities?

First, employers are advised to take all reasonable steps to avoid or limit potential criminal or civil liability. Employers should maintain a robust and comprehensive employment verification process, which involves I-9 compliance training for all personnel involved in the hiring process; proper supervision of all employees involved in the hiring process; annual self audits of all I-9s; a proper response protocol to Social Security mismatch letters; an anti-discrimination policy; and a contractor compliance policy.

Second, employers should not hire or continue the employment of individuals it knows, or has reason to know, are not authorized to work in the United States. Employers must not knowingly accept false documents or make false attestations as part of the I-9 completion process.

Failure to take these types of steps can increase the likelihood of civil and criminal liability for a company and its executives, managers and supervisors. Employers should pay heed to the following statement of policy from ICE - *"This case should be a reminder about the consequences facing employers who exploit illegal alien labor and violate our nation's laws: No employer, regardless of size, industry or location is exempt from these immigration laws."*

Click [here](#) for some samples of criminal cases against employers reported recently.

<sup>1</sup> *Marcy Forman, Director, Office of Investigations, Immigration and Customs Enforcement. April 30, 2009, Memorandum for Assistant Director, Deputy Assistant Directors, Special Agents in Charge regarding Worksite Enforcement Strategy.*

## For More Information

For a printable copy of this Alert, click [here](#). If you have questions or would like more information on this topic, please contact immigration attorney **Jeffrey Bell** at 816.360.4264 or [jbelle@polsinelli.com](mailto:jbelle@polsinelli.com).

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