



AUDITS AND RAIDS, PART II: AFTERMATH OF THE NOTICE OF INSPECTION, SUBPOENA, AND/OR WARRANTS PRESENTED

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ICE Audits

- How they progress
- Strategies for each step
- Negotiating and Reserving Appeal
- Advising Clients for the future
- Other repercussions/issues
- Going criminal



Raids

- Preparing Clients
- Communication keys
- Reviewing documentation
- Civil/criminal implications

FACT SCENARIO

You are contacted by Over Your Head, LLC—a roofing company owned by two brothers in Arlington, Texas. ICE Auditor John Smith showed up at the headquarters today and provided them with a Notice of Inspection. He asked for all Form I-9's for current employees along with any documents copied as part of the employment eligibility verification process and a list of all current employees. These documents must be hand delivered to ICE within 3 days. OYH hires you to represent them during the audit.

You learn that OYH has about 350 employees. The majority of the employees have I-9's, but they have about 20 independent contractors. They do about 75% of the hiring by themselves, but they also utilize two different staffing companies on occasion. The company was founded in 1984 and has never been audited by ICE before. Sally, the HR manager, looks over all the I-9's and maintains the documents, but many of the forms are completed at the worksite by a supervisor. The company is not on E-Verify. The company does make copies of all supporting documents and Sally thinks she can get together all the I-9's and other documentation requested by the deadline. The independent contractors are on the company payroll.

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Get a signed G-28 and email it to the ICE auditor so that all communication goes through you.

Instruct client to begin gathering all documentation that ICE has requested.

Discuss company background, hiring policies and procedures, and any other relevant information with company owners, HR personnel, and anyone else involved with the completion of Form I-9.

Ask for scans or copies of all I-9's and other documents that will be presented to ICE, so that you can conduct your own audit and provide estimates and information to the client while waiting to hear back from ICE.

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Review Form I-9's and documents and provide feedback to OYH regarding technical and procedural mistakes as well as potential number of unauthorized employees. It appears Sally the HR manager, was not maintaining adequate I-9 documentation, was using incorrect versions of the form, did not adequately verify employment authorization for about 30 employees, the hire date was missing on most Form I-9's, and wasn't signing Section 2 in a number of cases. Also, some of the I-9's were completed by supervisors in the field who did not sign the forms and did not properly complete Section 2. About 90 of the I-9's were not completed within 3 business days of the employee's first day of employment.

Discuss creating policies and procedures that promote and ensure a culture of compliance (training, E-Verify, internal audits, etc.)

If you cannot represent both the employer and any unauthorized employees looking for options, then suggest outside counsel for employees

One worker was hired prior to 1986 and therefore did not need an I-9, he is grandfathered.

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Use the fine chart and matrix to determine fine amount. By your estimation, it looks like there are about 140 unauthorized workers (~40%). That works out to a fine of approximately \$2,255 per worker that remains on payroll after the final termination memo (subject to negotiations) plus substantive mistakes on more than half of the Form I-9's could lead to an additional fine of \$935 per mistake.

Review the enhancement matrix and discuss formulating a replacement plan with the client

- How many need to be replaced?
- What positions are they in?
- How much training will a replacement need to perform that job?
- What methods of advertising will they use?
- How many jobs/projects are ongoing and when do they need to be completed by?
- Any other compliance factors (training, E-Verify, etc.)

Discuss potential criminal implications (fraud, knowing hire, aiding and abetting-harboring); Common questions from clients include:

- Can I just shut this company down and start a new one with the same workers?
- Can I re-hire them under different names?
- Can I use a subcontractor?
- Can I start a 2nd company and move the workers over there?
- Can I send workers to a staffing company to be processed and hired that way?
- How can I stop a mass exodus?
- How can I stop fired workers from going to my competition?

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