

Hot Topics and Emerging Issues in ICE Audits and USCIS/ FDNS Investigations

PRESENTED BY:

LORI T. CHESSER, DAVIS BROWN LAW FIRM

RICHARD A. GUMP, JR., LAW OFFICES OF RICHARD A. GUMP

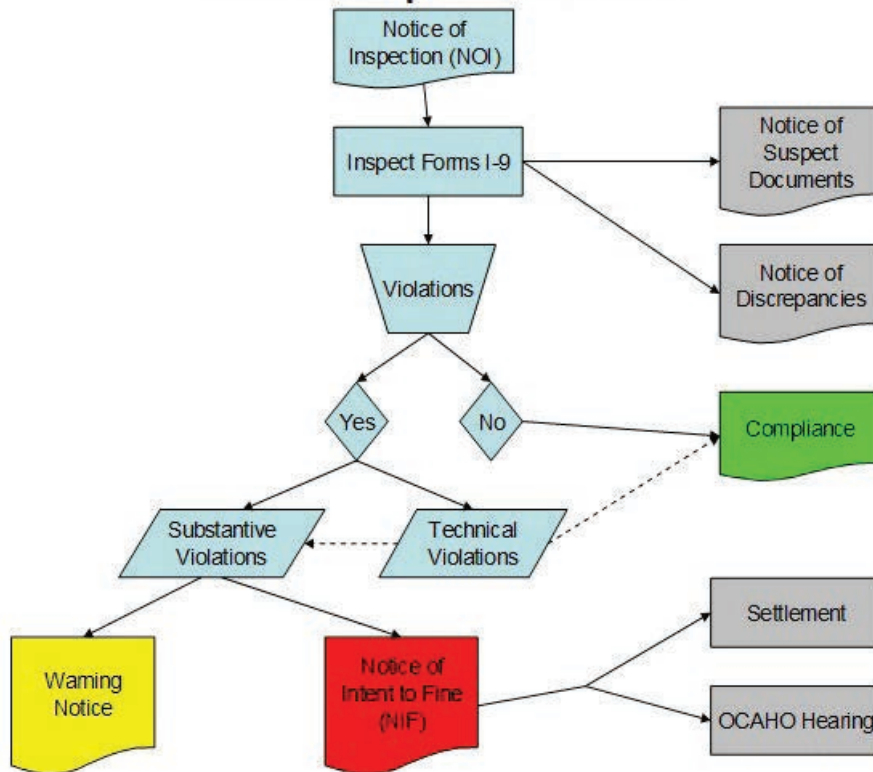
WORKSITE ENFORCEMENT CONTINUES TO GROW

- ▶ ICE initiated more than 5,000 audits from January to July 2018
- ▶ Raids and arrests resulting from audits have also increased
- ▶ ICE has become creative to get the maximum amount of fines from employers
- ▶ A signed settlement agreement is not the end of the road

AUDITS AND FINES

- ▶ ICE still targeting certain industries
- ▶ ICE mainly utilizes tips as a source of determining which companies to audit
- ▶ Due to increased numbers of audits, time between each step of the process continues to increase—some audits are taking well over a year to complete

Form I-9 Inspection Process



FINE CALCULATION

- ▶ Divide # of violations by # of employees for which a Form I-9 should have been prepared to obtain a violation percentage.
- ▶ Fine derived from adding together the Knowing Hire / Continuing to Employ Fine with the Substantive / Uncorrected Technical Violations Fine (plus enhancement or mitigation).
- ▶ Typically, the date of the violation is the date ICE initiated the audit and not when the I-9 was completed

Substantive/Uncorrected Technical Violation Fine Schedule (Effective for penalties assessed after January 27, 2017 whose associated violations occurred after November 2, 2015.)

Substantive Verifications Violations	Standard Fine Amount		
	1st Offense \$220 - \$2191	2nd Offense \$220 - \$2191	3rd Offense + \$220 - \$2191
0% - 9%	\$220	\$1,096	\$2,191
10% - 19%	\$548	\$1,315	\$2,191
20% - 29%	\$876	\$1,534	\$2,191
30% - 39%	\$1,205	\$1,753	\$2,191
40% - 49%	\$1,534	\$1,972	\$2,191
50% or more	\$1,862	\$2,191	\$2,191

FINE CALCULATION CONTINUED

- ▶ Fine ranges increased in the Federal Register in January 2018
- ▶ No new matrices issued by ICE as of yet
- ▶ Rumor that ICE will do away with matrices and percentages in favor of a straight range amount

Knowing Hire/ Continuing to Employ Fine Schedule (Effective for penalties assessed after January 27, 2017 whose associated violations occurred after November 2, 2015.)

Knowing Hire and Continuing to Employ Violations	Standard Fine Amount		
	1st Tier \$548 - \$4384	2nd Tier \$4384 - \$10957	3rd Tier \$6575 - \$21916
0% - 9%	\$548	\$4,384	\$6,575
10% - 19%	\$1,140	\$6,322	\$8,547
20% - 29%	\$1,754	\$7,232	\$11,177
30% - 39%	\$2,411	\$8,174	\$13,807
40% - 49%	\$3,069	\$9,094	\$16,568
50% or more	\$3,726	\$10,026	\$19,242

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U.S.C. citation	Name/description	CFR citation	DOJ penalty assessed after 8/1/16 (\$)	DOJ penalty assessed after 2/3/17 (\$) ¹	DOJ penalty assessed after 1/29/2018 (\$) ²
Immigration-Related Penalties					
8 U.S.C. 1324a(e)(4)(A)(i).	Immigration Reform and Control Act of 1986 ("IRCA"); Unlawful employment of aliens, first order (per unauthorized alien).	28 CFR 68.52(c)(1)(i) ...	Min. 539, Max. 4,313.	Min. 548, Max. 4,384.	Min. 559, Max. 4,473.
8 U.S.C. 1324a(e)(4)(A)(ii).	IRCA; Unlawful employment of aliens, second order (per such alien).	28 CFR 68.52(c)(1)(ii) ...	Min. 4,313, Max. 10,781.	Min. 4,384, Max. 10,957.	Min. 4,473, Max. 11,181.
8 U.S.C. 1324a(e)(4)(A)(iii).	IRCA; Unlawful employment of aliens, subsequent order (per such alien).	28 CFR 68.52(c)(1)(iii) ...	Min. 6,469, Max. 21,563.	Min. 6,575, Max. 21,916.	Min. 6,709, Max. 22,363.
8 U.S.C. 1324a(e)(5) ...	IRCA; Paperwork violation (per relevant individual).	28 CFR 68.52(c)(5) ...	Min. 216, Max. 2,156.	Min. 220, Max. 2,191.	Min. 224, Max. 2,236.

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