

What An Employer Should Do If ICE Issues A Notice of Inspection

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Employers should be concerned not only about Immigration and Customs Enforcement (“ICE”) visiting their workplace for the purpose of potentially detaining employees, but that ICE will issue a Notice of Inspection (“NOI”). ICE is the principal investigative arm of the Department of Homeland Security (“DHS”), which is authorized by the Immigration and Nationality Act specifically to inspect the I-9 forms of employees of a business. Form I-9 is used by the federal government to verify the identity and employment authorization of individuals hired to work in the United States.

When ICE Issues a NOI

When a NOI is issued to an employer, the employer must make employee I-9 forms available upon request at the location where ICE officers request to see them. The employer may also send I-9 forms and supporting documents electronically to ICE in electronic copy or hard copy, if requested. ICE provides a minimum of three business days’ notice before starting an inspection. During an inspection, the employer must retrieve and present only the Forms I-9 and supporting documents requested by the inspecting officer. Supporting documentation includes a copy of the employer’s payroll, a list of active and terminated employees, articles of incorporation and business licenses, and may include other documentation.

When the inspection of I-9s is completed, the employer will be receive one of the following Notice Findings:

- Notice of Inspection Results (also known as a “Compliance Letter”) which notifies the business that they are in compliance with I-9 requirements;
- Notice of Suspect Documents which advises the employer that based on the inspection, there are some employees for whom the documentation is not valid and advises the employer of criminal and civil penalties that may result;
- Notice of Discrepancies which advises the employer that the investigation was indeterminate regarding the eligibility of certain employees to work in the United States and provides an opportunity to provide additional documentation;
- Notice of Technical or Procedural Failures advises that the inspection found that there are technical or procedural violations by the employer and provides 10 days for the employer to correct its violations;
- Notice of Warning is issued when there are substantive verification violations that the inspection identified, but there is an expectation of compliance by the employer (although there are circumstances in which these cannot be issued);
- Notice of Intent to Fine (“NIF”) may be issued for substantive violations, uncorrected technical or procedural failures, knowingly hire violations (knowingly violating I-9 requirements to hire), and or continuing violations.

When a Notice of Intent to Fine is served, the employer is entitled to a hearing before an Administrative Law Judge. The employer must make the request for a hearing within 30 days of receipt of the NIF.

Employer Preparation for NOIs

Employers can prepare for the potential to receive an NOI in several ways. They may want to thoroughly review their I-9 forms and procedures to identify and correct any potential problems. They should also ensure that their onboarding procedure for new employees includes a standardized I-9 completion process, and those

who oversee this process are trained in implementing the process. Finally, employers should make sure that all I-9 forms and supporting documentation are organized and easily accessible, so they may quickly and efficiently respond to an NOI.

TAKEAWAY: Employers should be correctly filing I-9s for their employees and be prepared to receive a NOI. If you are an employer who is concerned about your I-9 forms, or have received a NOI or any of the other notices mentioned in the above blog, please contact [Stephanie Gironda](#) or any member of the [Wilentz Employment Law Team](#).

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