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**DON'T LET ICE FREEZE YOUR BUSINESS**

While the debate over national immigration policy continues to move at a snail's pace in Congress, the Department of Homeland Security ("DHS") and, more specifically, its worksite enforcement agency, Immigration and Customs Enforcement ("ICE"), is moving quickly to expand the scope and depth of its investigations.

ICE's raids of employers' worksites have been well-publicized this year. As we've seen, even employers who use the pilot program to verify social security numbers are not immune. An investigation alone can shut down your business for hours. If employees are detained and/or removed from your labor force, the impact will be lasting. If ICE comes knocking on your door, there's no time to freeze up—you must act quickly. In order to do that, you have to be prepared.

**Step 1: Warm up to the idea of self-audits.**

With the start of the new year, now is a good time for reviewing your practices and making any necessary changes. In short,

- a. Make sure you have a process for receiving, processing, and verifying/reverifying I-9s (including a tickler system for reverifying when necessary). See our [August 2006 E\\*Zine](#) for more about I-9 compliance;
- b. Make sure you have a document retention policy: keeping the I-9s separate from personnel files, and keeping them as long as necessary (but no longer);
- c. Do a self-audit, like a random sampling of 10% of I-9s to identify potential weaknesses in your system. Correct those weaknesses;
- d. Have policies/procedures for receiving and responding to no-match letters. In our [August 2006 E\\*Zine](#), we mentioned that the DHS had proposed regulations regarding responding to no-match letters. To date, the regulations have not been finalized. The DHS takes the position, however, that the proposed rules constitute a "best practice" to follow in the meantime; and
- e. Have a corporate immigration policy that firmly states the company's policy on hiring individuals authorized to work. Consider having a procedure for employees to report suspected unauthorized workers.

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***Step 2: Don't let letters from the DHS make you hot under the collar.***

If you receive a written request for information from the DHS to inspect your I-9s (which if you've followed Step 1, you can be fairly certain are in good shape):

- a. Insist on at least three business days to prepare for the audit;
- b. Do not consent to a search of **non-I-9** documents;
- c. Segregate I-9s from personnel records (if not already done);
- d. See if the request actually seeks all I-9s on a given day. If not, divide your I-9s into: (1) those of current employees; (2) those terminated within the past year; and (3) those terminated more than a year ago, but within three years after the date of hire. Other than these three groups, you do not need to maintain other I-9s;
- e. Before you turn over the records to the DHS, look at your own compliance and correct as many deficiencies ASAP. You cannot do anything to "hide" any problems you've discovered. You can, however, make corrections as long as you do so properly; and
- f. Bring the records to DHS rather than having the DHS come on site. This is obviously less intrusive to your business operations. Also, this permits you to retain control over the scope of documents reviewed by the DHS.

***Step 3: Don't get cold feet if ICE shows up on your doorstep.***

- a. Prevention is the theme of these steps. In order to respond quickly, you need to have a crisis management team in place NOW. This team should include personnel from Human Resources, IT, security, upper management, and your in-house and outside counsel. Additionally, if you have marketing personnel, someone from this department should be on your team as well;
- b. Develop a policy and procedure for responding to a raid, including an emergency contact list. Who will be notified and how? Who will "speak" for the company?;
- c. Train supervisors and employees on how to respond (in advance). You cannot tell employees that they cannot speak with agents. You can advise them that they are not legally required to do so;
- d. Don't forget to get an inventory of everything agents take, the name of lead agent, the name of the agent's supervisor, etc. Also, take an "inventory" of all people with whom they speak. Your crisis management team should designate which person or people will be handling these details;
- e. Have a plan for the day after the raid. You will need to address what to tell employees, the press, etc. You will also need to find out what people said to agents and get a record of it. Also, in the event that some of your employees were detained, you will need a plan for assisting those employees and/or their families; and
- f. Check your insurance policy and notify your insurance company immediately so that if you have coverage, you will be putting yourself in a position to receive such benefits.

Solid prevention and planning will go a long way to make sure your business doesn't freeze in the wake of a government investigation.

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## 'TIS THE SEASON FOR REVIEWING YOUR H-1B NEEDS

As we reported in our [June 2006 E\\*Zine](#), if you are thinking about hiring foreign nationals for professional workers in a specialty occupation, you need to plan far in advance due to the cap. "Specialty occupation" means an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation, and which requires the attainment of a bachelor's degree as a minimum requirement to perform the job duties.

Due to current cap constraints, you may not employ a foreign national under an H-1B visa until October 1, 2007; however, you may file your petition on April 1, 2007. Last year, the cap was reached by May 26, 2006—less than two months after employers could file petitions. In order to ensure you are ready to file a petition on April 1, if you haven't done so already, you need to contact your immigration counsel now to begin the process.

## LABOR & EMPLOYMENT INTERNET RESOURCES

[HRhero.com](#)

[Louisiana Employment Law Letter](#)

## IN THE SPOTLIGHT—UPCOMING SPEECHES/PRESENTATIONS BY JONES WALKER LABOR & EMPLOYMENT ATTORNEYS

- [Los Angeles County Bar Association](#)  
Bar Leaders Disaster Planning Conference  
*Lessons from Living Through Disaster*  
H. Mark Adams  
January 27, 2007—Los Angeles, California
- [HRhero.com and Employers Counsel Network](#)  
*Master Class on Fair Labor Standards Act*  
H. Mark Adams, Sidney F. Lewis, V, and Jennifer L. Anderson  
April 24, 2007—Hotel InterContinental, New Orleans, Louisiana
- [Lorman Education Services - Continuing Education Seminars](#)  
*Employee Discharge and Documentation*  
Sidney F. Lewis, V and Laurie M. Chess  
May 9, 2007—New Orleans, Louisiana
- [Lorman Education Services - Continuing Education Seminars](#)  
*Document Retention and Destruction*  
Laurie M. Chess  
June 2007—Miami, Florida

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*Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:*

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