



*The Firm is pleased to welcome Hany S. Brollesy, Esq. to our newly formed Immigration Law Practice Group.*

[hbrolesy@ssecz.com](mailto:hbrolesy@ssecz.com)

## NJ Businesses Targeted for Immigration Enforcement

### Even if the Workforce is 100% Legal!

HANY S. BROLLESY, ESQ.



In the past 10 months, officials of U.S. Immigration and Customs Enforcement (“ICE”) have issued Notices of Inspection to 34 New Jersey businesses indicating that ICE will audit their hiring records to determine compliance with employment eligibility verification laws. To date, 25 New Jersey businesses have been warned that

they may face fines, totaling roughly \$1.25 million, for failure to properly verify their workforce. While some of the companies were found to employ unauthorized workers, a number of companies, with completely legal workers, were fined simply for not maintaining proper I-9 forms for all employees.

Under President Obama, immigration workforce enforcement has largely targeted employers, rather than workers, and depended on audits of company paperwork that is supposed to prove employees are working legally. News of ongoing worksite investigations, criminal indictments and heavy-handed convictions of managers and executives are an indication that immigration-related compliance will continue to be a hot topic for the remainder of President Obama’s term. In its Strategic Plan for Fiscal Year 2010-2014, ICE listed employer compliance as its third highest priority.

All U.S. employers are responsible for the completion and retention of Form I-9 for each individual they hire for employment in the U.S., including citizens and non-citizens. On the form, the employer must verify the employment eligibility and identity documents presented by the employee and record certain identity document information on the Form I-9.

If you receive a Notice of Inspection, you will be given three (3) days to prepare for a meeting with federal officials in which the company’s Form I-9 records will be reviewed. In addition to properly completed I-9 forms for all current and recently terminated employees, you may be required to turn over payroll documentation and other employee documentation.

Just because you don't hire any foreign nationals does not mean you won't be targeted for an investigation. In May 2010, the government fined one company in Texas approximately \$34,000 for not having I-9 forms for all employees-- even though the company did not have any unauthorized workers. According to the company's General Manager, it was a family-owned business, that employed mostly family members for a very long time. Although the company did not employ any unauthorized workers, the company did not have all the required documents in place. Another company, a six-person outfit, with no unauthorized workers, was fined approximately \$4,400, for failing to have the proper Form I-9 documentation to verify the identity and work authorization of all of its employees.

In fact, even if you have Form I-9s for every employee, if the forms are not completed fully or properly, or the proper records are not maintained, an employer may still be found in violation of the law.

Businesses should take a proactive approach to ensure the employment eligibility and proper record keeping for their workforce by performing regular, internal Form I-9 compliance audits. Such a strategy will enable the implementation of uniform policies and procedures during the hiring process, as well as allow employers to better identify any necessary training for human resources professionals. Perhaps more importantly, conducting internal audits can significantly limit the extent of any fines imposed in the event of an external audit by the federal government.

It's clear that ICE will continue auditing I-9 forms to ensure that employers are complying with federal immigration laws. Auditing your company's I-9 forms before another round of Notices of Inspection are issued is the best way to minimize your company's risk for administrative fines, ranging from \$110 to \$1100 per paperwork violation and \$375 to \$16,000 for substantive violations.

Employers who have escaped a Notice of Inspection so far should take this time to ensure that their I-9 forms are properly completed. Employers should work with immigration counsel to conduct an in-house I-9 audit, review their I-9 forms, assess the company's exposure for administrative fines, correct any errors and ensure proper training of personnel.

If you have any questions about these legal issues or any other legal matters, please do not hesitate to contact us.

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*Newark Office:*  
45 Bleeker St.  
Newark, NJ 07102  
Tel: 973.623.6838

**44 Whippany Rd.  
Suite 210  
P.O. Box 2355  
Morristown, NJ 07962  
Tel: 973.301.0001**

*New York Office:*  
845 Third Avenue  
17th Floor  
New York, NY 10022  
Tel: 212.752.5258