Employer Best Practices During Worksite Enforcement Audits

DO

- Develop a transparent process for interacting with employees during the audit, including communicating with employees that the employer is subject to an ICE audit.

- Provide all workers with a reasonable amount of time to correct discrepancies in their records identified by ICE. Treat all workers in the same manner during the audit, without regard to national origin or citizenship status. This means that all workers with like discrepancies who are asked to present additional documents are provided with the same timeframes and the same choice of Form I-9 documents to present.

- If your workers are represented by a union, inform the union of the ICE audit and determine whether a collective bargaining agreement triggers any obligations.

- Inform employees from whom you seek specific information that you are seeking this information in response to an ICE audit.

- Communicate in writing with employees from whom you seek information, and describe the specific basis for the discrepancy and/or what information you need from them. Follow the instructions on the ICE notice and the instructions for the Form I-9 when seeking to correct Form I-9 defects, including the Lists of Acceptable Documents and the anti-discrimination notice.

DON'T

- Selectively verify the employment eligibility of certain employees based on their national origin or citizenship status based on the receipt of an ICE Notice of Inspection.

- Terminate or suspend employees without providing them with notice and a reasonable opportunity to present valid Form I-9 documents.

- Require employees to provide additional evidence of employment eligibility or more documents than ICE is requiring you to obtain.

- Limit the range of documents that employees are allowed to present for purposes of the Form I-9.

- Treat employees differently at any point during the audit because they look or sound foreign, or based on assumptions about whether they are authorized to work in the U.S.