



BY DONNA J. TUTTLE

Workplace immigration inspections are high on the federal government’s agenda — all the way from the White House to the local offices of the Department of Justice. Just ask Cox Smith Matthews immigration lawyer and shareholder Kathleen Campbell Walker. “On Sept. 16, 2010, Immigration and Customs Enforcement (“ICE”) confirmed that it started yet another concentrated enforcement effort against employers who allegedly are engaging in hiring unauthorized workers, paying employees’ unfair wages, or otherwise exploiting workers,” Walker says. “Over 500 employers will be receiving I-9 Notices of Inspection (“NOI”) in the next few days.” Walker, who works out of the El Paso office of Cox Smith, is internationally recognized for her business immigration work. She represents a wide range of corporate clients and has been regularly called upon to testify before Congress as well as the Texas House and Senate. Board Certified in immigration and nationality law, Walker is a graduate of Texas Tech University and received her

law degree from The University of Texas School of Law.

**Q. Tell us about the increased inspections of I-9s**

A. A July article published in the San Antonio Express News noted that six companies in San Antonio had been penalized from October 2009 to May 2010. The fines for the San Antonio companies reported ranged from \$825 to \$5,775 while fines listed for other companies in the state went up to \$360,000. ICE often publishes its worksite fines and criminal penalties at <http://tinyurl.com/28grves>, while OSC actions are published at <http://www.justice.gov/crt/osc/htm/Enforcement.php>.

**Q. How much notice is a company given?**

A. NOIs provide the employer with three days notice prior to reviewing the I-9s. Typically, the NOI requests I-9s for current employees and for terminated employees subject to the retention requirements (three years after date of hire or one year after date of termination, whichever is

longer). ICE may allow the employer additional time to provide the I-9s and may reduce the scope of the audit. One of the worst case scenarios involves criminal penalties against management for the knowing hire or continued employment of unauthorized workers, and in some cases, forfeiture of company assets.

**Q. What types of firms are targeted?**

A. Companies are often targeted based on investigations related to reports by disgruntled employees or in some cases, a competitor. ICE has often targeted companies based on national security concerns (e.g. defense contractors, energy companies, transportation, etc.). Worksite actions often focus on industries with historically high numbers of undocumented workers such as: construction, hospitality, cleaning, and food processing.

**Q. What are the most common mistakes companies make in this arena?**

A. Companies fail to conduct internal audits of their I-9s to be able to correct errors and implement clear compliance procedures. Often employers complete the I-9 before the decision to hire, which is discriminatory. Employers also sign section two of the form without seeing the original identity and work authorization documents of the employee. It is critical to remember that both employers and employees sign the I-9 form under penalty of perjury. In addition, the payroll records often do not match the hire dates reflected on the I-9 form.

**Q. How can employers think defensively?**

A. Some defensive actions to implement now are:

- Conduct an internal I-9 audit and be cautious in correcting I-9s to avoid fraud allegations. You may want attorney client privilege to attach to any audit.
- Create an I-9 compliance manual .
- Evaluate company exposure to constructive knowledge of an employee’s unauthorized status.
- Provide regular training regarding I-9 compliance and changes.
- Review the M-274 I-9 manual posted on the USCIS Web site.
- Consider the ICE I-9 best practices listed at [www.ice.gov](http://www.ice.gov).
- Review the OSC I-9 anti-discrimination video at <http://www.justice.gov/crt/osc/>.