

Cross Border Business Law Blog

2018 Worksite Enforcement Investigations by U.S. Immigration & Customs Enforcement Already Double 2017 Total

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With more than four (4) months left in the federal government's 2018 fiscal year, U.S. Immigration & Customs Enforcement (ICE) this week reported it had already doubled the number of audits that it conducted during the entire 2017 fiscal year. ICE, an agency within the U.S. Department of Homeland Security, is responsible for upholding the laws established by the Immigration Reform and Control Act (IRCA) of 1986, which require employers to verify the identity and work eligibility of all individuals they hire.

On May 14, 2018, the agency's Homeland Security Investigations (HSI) unit reported opening 3,510 worksite investigations in the current 2018 fiscal year. This included 2,282 employer I-9 audits, 594 criminal and 610 administrative worksite-related arrests. This is almost a 60 percent jump from the 1,360 I-9 audits it opened during the entire 2017 fiscal year.

Employers who find themselves the subject of an HSI investigation that results in a finding they violated the law can be faced with both criminal and civil penalties. Last year, businesses were ordered to pay \$97.6 million in judicial forfeitures, fines and restitution, and \$7.8 million in civil fines, including an employer whose financial penalties represented the biggest fine ever levied in an immigration-related investigation.

Employers should expect more of the same this summer. Derek Benner, head of ICE's Homeland Security Investigations (HSI) unit, told reporters they have plans for additional audits this summer, which will push the total number to over 5,000 investigations. Prior to this year, the largest number of ICE audits had totaled 3,127 in 2013.

The 5,000 investigations expected this year may seem like a small number if the agency's proposal for an "Employer Compliance Inspection Center" is approved. According to Mr. Benner, HSI could handle as many as 15,000 cases by centralizing their processing at a single location (currently conducted through regional offices). The agency's Employer Compliance Inspection Center would centralize personnel, such as auditors and attorneys, into a single location, which will allow them to quickly levy fines or refer cases to regional offices for further

investigation. The agency would also leverage available technology to increase efficiencies, such as electronically scan all documents, employ methods to flag suspicious activity, and serve audit notices electronically or by certified mail (instead of in person as is currently done).

The agency's emphasis on conducting worksite enforcement investigations to find immigration violators will continue in the coming years. Employers should take proactive steps to ensure compliance with federal law, such as performing internal I-9 audits, and implementing appropriate training to staff.

Tags: Employer Compliance Inspection Center, employer I-9 audits, Form I-9, ICE, Immigration Reform and Control Act, IRCA, U.S. Department of Homeland Security, U.S. Immigration & Customs Enforcement, worksite enforcement investigations