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ICE Steps Up I-9 Audit Activity in FY 2010

December 3, 2009

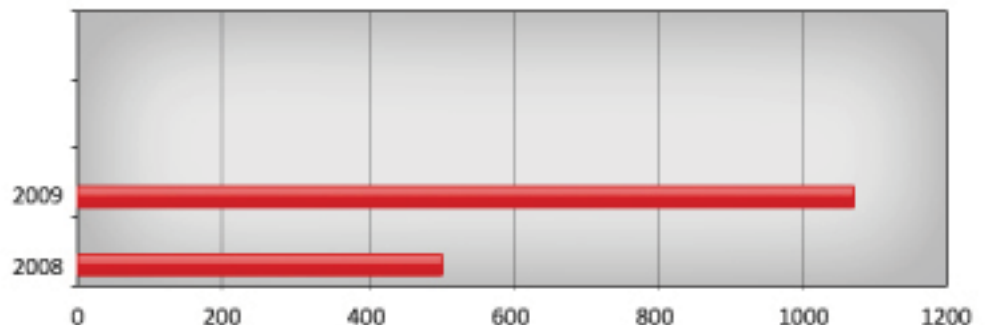
By Penni Bradshaw
Winston-Salem Office
and
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Greenville Office

The Immigration and Customs Enforcement agency, the enforcement arm of the U.S. Department of Homeland Security, announced in November that it had issued I-9 audit notices to 1,000 businesses. ICE says it is targeting employers that are associated with “critical infrastructure” and “public safety and national security,” but these “limitations” appear to be very broadly drawn.

In an I-9 audit, the employer is requested to submit Form I-9s, payroll records, payroll tax filings, W-2s and 1099s, Social Security no-match letters, and the like, so that the ICE can determine whether the employer is in compliance with federal employment eligibility laws. A finding of noncompliance can lead to fines and, in the case of “pattern or practice” violations, criminal penalties. Results from 654 recent I-9 audits, announced by ICE in July, reveal that about 16 percent of the total number of Form I-9-related documents reviewed were identified as “suspect.”

It’s been an active year for I-9 audits, and it signals the Obama administration’s departure from the Bush administration’s more restrained employment enforcement policy. According to an ICE news release issued last month, the agency has initiated nearly 1,900 cases since April 2009, approximately triple the 600-plus cases during the corresponding period in fiscal year 2008. Other statistics released by ICE reveal a dramatic increase in worksite enforcement activity – and employer penalties – as shown in the charts below:

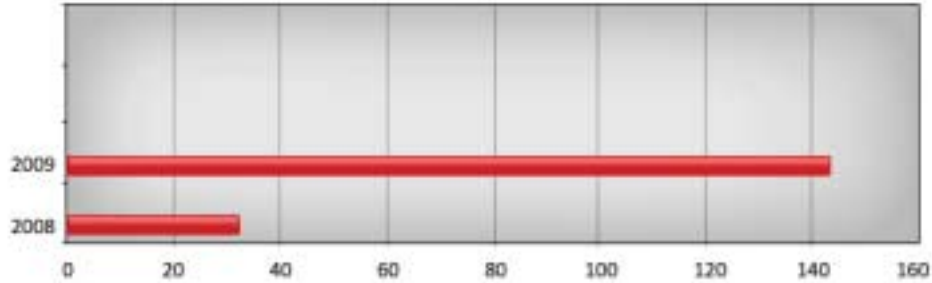
FORM I-9 INSPECTIONS (503 in 2008, 1069 in 2009)



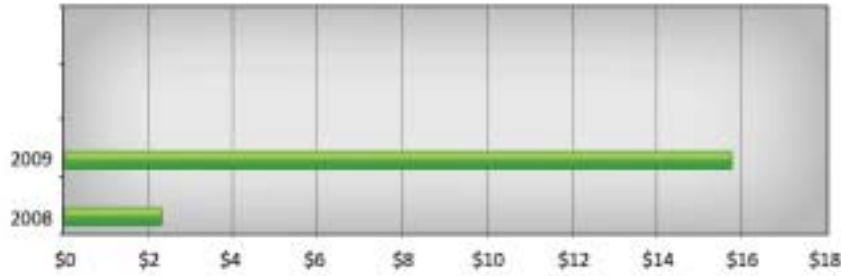
- Atlanta
- Asheville
- Austin
- Birmingham
- Boston
- Chicago
- Columbia
- Fairfax
- Greenville
- Jacksonville
- Kansas City
- Lakeland
- Los Angeles County
- Macon
- Milwaukee
- Nashville
- Tampa
- Ventura County
- Winston-Salem

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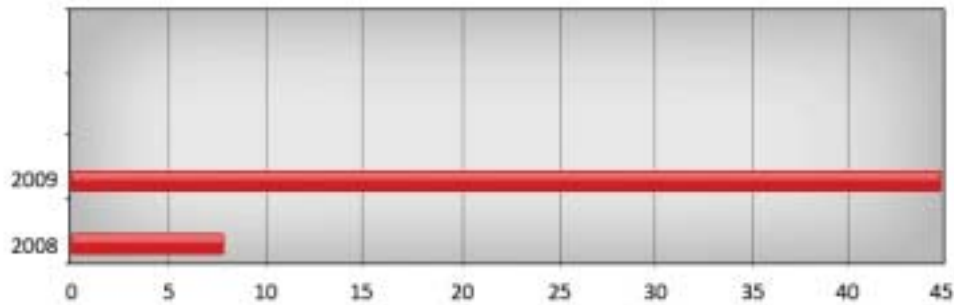
NOTICES OF INTENT TO FINE – NUMBER OF NOTICES ISSUED (32 in 2008; 142 in 2009)



NOTICES OF INTENT TO FINE – DOLLAR VALUE (IN MILLIONS) (\$2.4 MM in 2008; \$15.9 MM in 2009)



FINAL ORDERS – NUMBER ISSUED (8 in 2008; 45 in 2009)

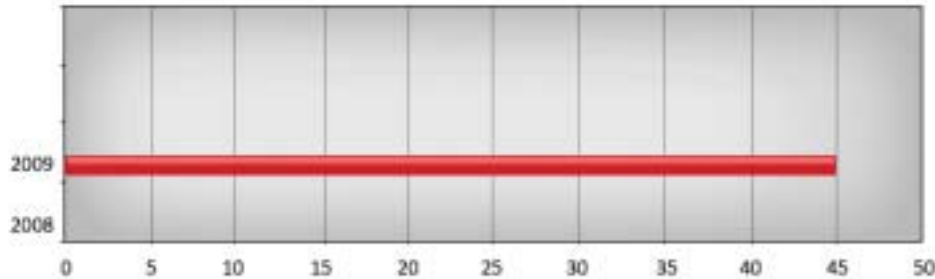


FINAL ORDERS – DOLLAR VALUE (\$196,523 in 2008; \$798,179 in 2009)

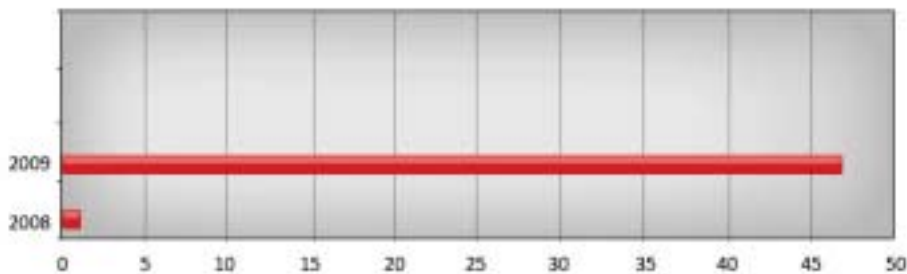


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BUSINESSES DEBARRED (banned from securing work on federal contracts) (0 in 2008; 45 in 2009)



INDIVIDUALS DEBARRED (banned from securing work on federal contracts) (1 in 2008; 47 in 2009)



Preventive Measures: What Your Business Can Do Now

In light of this unmistakable trend, employers are advised to prepare for the possibility of an I-9 audit, by reviewing their existing employment applications and hiring records for completeness, accuracy, and authenticity. A starting point to understanding the I-9 process is to review the **DHS “Handbook for Employers”** which is available for download at the U.S. Citizenship and Immigration Service website.

Employers also may want to consider strengthening their I-9 verification process by **registering for the “E-Verify” program online**. Participation in E-Verify is voluntary. E-Verify enables an employer, upon completing Form I-9, to access an automated response from the E-Verify system regarding the employment authorization of the individual, and to take appropriate steps toward compliance.

Constangy, Brooks & Smith offers significant experience in assisting employers with conducting internal I-9 audits, providing training in I-9 compliance and related immigration compliance issues, and in representing employers in government investigations. For assistance in these areas, please contact any member of Constangy’s **Immigration Practice Group** or the Constangy attorney of your choice.

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