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ON THE FRONT LINES OF WORKPLACE CARE

**8<sup>th</sup> ANNUAL EMPLOYMENT LAW CONFERENCE 2019**  
*Off to Work we Go*

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**Did Scrooge McDuck's Employees Have I-9s?: Important Developments in Immigration Compliance and the Workplace**

Presented by:  
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**What We Will Cover:**


**Recent Enforcement Activity**

- SS Mismatch Letters
- I9 Audits
- ICE Raids

**Compliance Best Practices**

**Narrowing of Immigration Benefits**

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## Changing Landscape of Immigration Law and Enforcement

- Record-Breaking Immigration Enforcement Continues
- I-9 Compliance and Enforcement
- Higher scrutiny on immigration filings
- Executive action repeal and enactment

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## Recent Activity: I-9 Audits

- Rapid increase in I9 Audits
  - How to Handle a visit by ICE
  - How to Respond
  - How to Protect Your Business

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## ICE I-9 Audits: Notice of Inspection

- Notice of Inspection – in person or by mail
  - Do not waive three day notice period
- Prepare I9 audit guidance/policy
  - Immigration point person (someone onsite)
  - Keep officer in public places
  - Do not provide additional documentation or allow employee interview or location search unless subpoena or warrant

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**ICE I-9 Audits: SB450**

- **Enacted on January 1, 2018**, SB450 placed additional requirements on employers regarding I9 inspections related to **voluntary consent** and **notice to employees**
- **Federal court enjoined several provisions** that prohibited employers from:
  - Voluntarily consenting to allow officers to enter non public areas of labor (*needed warrant*)
  - Voluntarily consenting to allow officers to access, review or obtain employee records (*needed warrant or subpoena*)
- **Federal Court upheld notice provisions**
  - With 72 hours of receiving Notice of Inspection, employers must notify all employees
  - Upon reasonable request, an employer must provide an affected employee with a copy of a Notice of Inspection of I-9 forms
  - Employers must provide affected employees of the results of the inspection

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**ICE I-9 Audits: SB450**

- **Notice to Employees of Inspection**
  - With 72 hours of receiving Notice of Inspection, employers must notify all employees
  - Post in location normally used to communicate with employees
  - Post in language normally used to communicate with employees
  - Must include:
    - Name of immigration agency conducting inspection
    - Date the employer received the NOI
    - Nature of the inspection to the extent known and
    - A Copy of the Notice of Inspection

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**ICE Raids: Search Warrants**

- Prepare ICE raid guidance/policy
- Review search warrant (issued and signed by judge)
- Notify management contact and legal counsel immediately
- Comply with terms of warrant - do not resist
- Keep track of what is seized/taken
- Be prepared to address media during and after raid

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## Protecting Your Business: I-9 Basic Requirements

- I-9 for all employees hired after November 6, 1986
- Section 1
  - completed by employee **no later than** start date of employment.
  - may complete form prior to start date if offer of employment is made and accepted.
- Section 2
  - completed by employer by end of **third** business day after employee starts work.
- Section 3 - reverification
- **Insert N/A** in all fields where **no information is available.**

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## Use the Correct Form

- [www.uscis.gov](http://www.uscis.gov)
- Paper version
- Smart form

Either form must  
printed and signed.

### I-9, Employment Eligibility Verification

- Form I-9 (PDF, 535 KB)
- Form I-9 Paper Version (This version is unfillable and must be printed for completion on paper only) (PDF, 73 KB)
- Form I-9 Supplement, Section 1 Preparer and/or Translator Certification (PDF, 816 KB) (PDF, 816 KB)
- Instructions for Form I-9 (PDF, 565 KB) (PDF, 565 KB)
- Form I-9 in Spanish (May be filled out by employers and employees in Puerto Rico ONLY) (PDF, 421 KB)
- Instructions for Form I-9 in Spanish (PDF, 322 KB)
- M-274, Handbook for Employers, Guidance for Completing Form I-9 (This handbook will be updated soon; refer to the Form Instructions for the most up-to-date information.) (PDF, 2.14 MB)

**New version = 09/18/2017**

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## Self-Audits: Making Corrections

- Correct errors, as allowed, on each form.
- Section 1 – **Employee** makes corrections.
- Section 2 – **Employer** makes corrections.
- Strike through errors – do not use White Out or Liquid Paper.
- All corrections should be initialed, dated, and include the words “Per Self Audit.”

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### Example of Audited I-9 with Corrections

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### Retention Requirements

- Once **employee terminated**, you must retain Form I-9 for:
  - At least **three years from date of hire**; and
  - At least **one year from date of termination**;
  - Whichever is later.**
- Once retention requirements met, purge/shred form.

**Example:**  
 Start date: 1/1/2010  
 Terminated: 6/30/2011  
  
 3 yrs from start: 1/1/2013  
 1 yr from term: 6/30/2012

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### Missing Form I-9

- If you determine I-9 is missing for a current employee – complete immediately.
- Ask employee to complete Section 1, sign and date (with current date)
- Complete Section 2 (w/original start date) and sign and date (w/current date)
  
- If you discover I-9 is missing for terminated employee, you may contact terminated employee and ask to complete a new I-9 now.
- Good practice to review I-9 form at termination/exit interview.

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### Narrowing of Immigration Benefits

- More Requests for Evidence
- More Denials
- More Processing Delays
- Changes through Executive Orders
  - DACA and DAPA
  - H4 dependent EADs
  - TPS
  - Asylum

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### Increased Scrutiny on Immigration Filings

- H1Bs under increased scrutiny
  - More RFEs
  - More denials
  - Possible H1B cap changes
- TN visas for engineers more narrowly reviewed
- Advance Parole Abandonment
- Denial without RFE and no prior approval deference
- Substantial processing delays

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### I-9 Best Practices

- Only accept unexpired documents.
- Use E-verify for new hires.
- Establish a written I-9 compliance policy.
- Implement compliance and training programs.
- Allow only trained personnel to complete I-9s.
- Perform annual internal I-9 audits.
- Establish a protocol for responding to government agencies.
- Implement policies to protect against document abuse.
- Maintain clear copies of verification documents.

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## Social Security Administration

- ◆ Educational Correspondence (EDCOR)
  - 1994 – 2005
  - 2018 - current
- ◆ Wage reports may not match for a number of reasons. These include typographical errors, unreported name changes, and inaccurate or incomplete employer records
  - SSA places the earnings information in the Earnings Suspense File instead of posting the earnings to an employee's earnings record
  - SSA began notifying third party payroll providers and employers submitting wage reports with one or more name and SSN combinations that did not match our records

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## Social Security Administration

- ◆ Educational Correspondence (EDCOR)
  - Informational Letters
    - ✓ "Third Party Provider Notification" to the third party payroll provider
    - ✓ "Educational Correspondence (EDCOR) Announcement" to employers.
  - Employer Correction Request Letters
    - ✓ letters to employers who have one or more name and
    - ✓ SSN combinations that do not match our records

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## Social Security Administration

- ◆ Three Types of Educational Correspondence (EDCOR) "No Match"
  - ◆ Employees
    - This letter informed the employee about name and SSN discrepancies.
    - We derived the address from the employee's Form W-2.
  - ◆ Self-Employed
    - This letter informed the employee about name and SSN discrepancies.
    - We sent it to the self-employed employee's address derived from the data provided by the Internal Revenue Service
  - ◆ Employers
    - We sent this letter to the employer and requested information about the earnings reported for the employee earnings we placed in the Earnings Suspense File.
    - The letter went to the employer because an employee's address was available but the address did not exist in the United States Postal Service database or an employee's address was unavailable.

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## Social Security Administration

◆ How to Handle EDCOR Inquiries

- EDCOR letters direct recipients to call 1-800-772-6270
- EDCOR letters direct recipients to our Business Services Branch of the Office of Central Operations
- Calls are serviced by 'Employer Reporting Technicians'

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## Business Services Online

- [Free](#) secure suite of services used to file W-2/W-3 wage reports and to verify Social Security Numbers
- For employers, accountants, and payroll providers
- Different from a [my Social Security](#) account
- [www.ssa.gov/employer](http://www.ssa.gov/employer)

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## W-2/W-2C Online

- **W-2/W-2C Online**
  - FREE
  - Electronic W-2 form; data is directly keyed into SSA system
  - 50 W-2s or 25 W-2Cs per report
  - Ideal for small businesses
  - Businesses can print copies of W-2s for employees on plain paper
  - Can use W-2C Online even if you file on paper or through a 3<sup>rd</sup> Party

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## Social Security Number Verification Service

Web-based - Name/SSN Verification



- ✓ Name & number matching for wage reporting
- ✓ *Not for* screening potential hires
- ✓ *Not for* income tax filing purposes
- ✓ It isn't e-Verify

Two methods:

- Direct key up to 10 – immediate results
- Upload a file up to 250,000 – next day

*Best Practice - Verify entire database once, then verify new hires (all, not selectively)*

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## Final Questions?

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 and  
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*Thank You*

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