We now are in President Obama's second term, and still minimal progress has been made about an issue clearly important to the roofing industry—immigration. Roofing workers are scarce, and without a reliable source of workers, many contractors are faced with the risks of hiring undocumented workers.

The Immigration Reform and Control Act requires employers to verify employees' identities and employment eligibility; the Employment Eligibility Verification Form I-9 is the primary means of documenting this verification. Employers who fail to properly complete I-9 forms are subject to civil fines ranging from $110 to $1,100 per paperwork error violation.

ICE
Immigration and Customs Enforcement (ICE) is an investigative branch of the Department of Homeland Security (DHS) charged with enforcing U.S. immigration and customs laws. ICE was created in 2003 and assumed the responsibility of enforcing the immigration laws from the Immigration and Naturalization Service, commonly known as INS.

ICE verifies employer compliance with I-9 requirements by conducting inspection audits, which are initiated by serving a Notice of Inspection to an employer compelling it to produce I-9 documents. I-9 audits are a critical component in ICE's work-site enforcement strategy.

ICE has revealed it is focusing its audit and inspection efforts on critical infrastructure industries and industries that rely on work forces that traditionally depend on vulnerable workers, such as the construction industry. Given the increased enforcement efforts of ICE, particularly within the construction industry, it is important you know and understand your rights and make preparations for how to respond if ICE issues a Notice of Inspection and conducts an audit of your company's I-9 forms.

NOTICE OF INSPECTION PROCESS
ICE has the authority, without the necessity of a subpoena, to inspect any employer's I-9 forms to verify compliance and check accuracy. Unless ICE has a warrant or subpoena, it is required by law to provide employers three days' notice to produce I-9 forms for inspection and copying. If ICE has a warrant or subpoena, no advance notice is required and an employer must allow ICE to conduct its search in accordance with the scope set forth in the warrant. If the employer refuses to comply, ICE can seek judicial enforcement of the subpoena or warrant.

Should an ICE investigator appear at a job site without a warrant or subpoena, you should know and understand an investigator cannot demand an immediate production of the I-9 forms. An important step is for you to designate a management representative who is authorized to meet and talk to ICE or DHS personnel. Regardless of whether an ICE investigator appears with a subpoena, the company representative authorized to meet and talk to DHS or ICE personnel should be contacted. You also should immediately contact immigration or employment counsel for assistance with the audit.

Although an investigator may appear at a company's office to give a notice of the intent to audit, it has been ICE's practice to cooperate with the employer when scheduling an I-9 form audit beyond three days after the audit notice. During the time period between receipt of the notice and actual audit, you need to immediately begin assembling the documentation. You also are advised to conduct your own internal audit of I-9 forms and correct any mistakes and complete I-9 forms if none exist. Mistakes should be initialed and dated and never backdated. Correcting mistakes in this manner can avoid a large fine, and conducting the self-audit will help assess potential liability.

THE AUDIT
In the event of an audit, you are advised to keep your I-9 forms separate from other employment-related documents that are kept within an employee's personnel file. This is because in the event ICE discovers a possible violation of the law within the Department of Labor’s (DOL's) jurisdiction during the course of an audit, ICE must contact the appropriate DOL field office.

During an audit, your company representative always should be polite and assume an attitude of cooperation with ICE and
DHS. The designated company representative also should keep records of all information sought by ICE or DHS and the questions the ICE investigator asks. A record also should be kept of the responses given to any questions posed by the ICE investigator. If the ICE or DHS official intends to remove documents from the premises, the company representative should make copies of all documents given to ICE and an inventory should be created that identifies the number of original I-9 forms that were relinquished to ICE.

**AUDIT RESULTS**

When an I-9 form audit is complete, ICE will notify you in writing of the inspection results. If you are found to be in compliance, the notice received from ICE is referred to as a Notice of Inspection Results, or a compliance letter.

If ICE determines an employee is unauthorized to work, it will advise you of the possible criminal and civil penalties for continuing to employ that individual. This notice is referred to as a Notice of Suspect Documents. The notice provides you and the employee an opportunity to present additional documentation to demonstrate work authorization if you or the employee believe the finding is in error.

If ICE is unable to determine a particular employee's work eligibility, ICE provides a formal Notice of Discrepancies. A Notice of Discrepancies advises you to provide the employee with a copy of the notice and to give the employee an opportunity to present ICE with additional documentation to establish employment eligibility.

When technical or procedural violations are found, ICE issues a Notice of Technical or Procedural Failures. This notice gives you 10 business days to make corrections. If corrections are not made in a timely manner, ICE determines a substantive violation has occurred. You may receive a monetary fine for all substantive and uncorrected technical violations.

If a fine will be issued, ICE will publish a Notice of Intent to Fine. Penalties for substantive violations, which include failing to produce an I-9 form when retention of the form was required, range from $110 to $1,100 per violation. If a Notice of Intent to Fine is issued, you have 30 days to contest the intended fine by requesting a hearing before an administrative law judge. If you request a hearing, DHS files a formal complaint with the office of the chief administrative hearing officer and the case is assigned to an administrative law judge. The office of the chief administrative hearing officer then sends all parties copies of the notice of hearing and complaint.

If the matter is not resolved in settlement or not disposed of by the judge in response to a dispositive motion, the matter proceeds to a hearing. Following the hearing, a final agency order is issued by the administrative law judge. If you disagree with the administrative law judge's decision, you have 45 days to file an appeal with the appropriate federal circuit court of appeals.

**EXPECT INTENSITY**

ICE recently announced it conducted the highest number of I-9 audits during fiscal year 2012, which ended Sept. 30, 2012. ICE indicated I-9 audits of employers increased from 250 in fiscal year 2007 to more than 3,000 in fiscal year 2012. Expect this trend to continue. With an understanding of how the audit process works and how you can prepare for it, your company will be in a better position to avoid any fines or penalties at the conclusion of the audit process.

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