

EMPLOYMENT LAW ALERT

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Since July 1, 2009, private employers in South Carolina with 100 or more employees have been subject to audits by the South Carolina Department of Labor, Licensing and Regulation (LLR) to check compliance with the South Carolina Illegal Immigration Reform Act (the Act).

As explained in our [Employment Law Update issued June 25, 2009](#) (“[Employment Verification Reminder for South Carolina Employers](#)”), the Act gives private employers the option of either using the federal E-Verify program to check the employment status of new hires, or making sure each new employee holds a qualifying driver’s license or identification card.

As LLR has hired auditors and started inspecting employers, LLR auditors are taking positions that we believe are inconsistent with the Act. For example, auditors are attempting to conduct unannounced “random” audits. But the Act provides for audits to take place “at reasonable times,” and federal regulations require federal immigration inspectors to provide at least three days notice to an employer prior to inspection. We have been communicating to LLR our position that the Department should also provide three days advance notice of an audit.

Additionally, LLR auditors are asking to review I-9 forms and several other kinds of documents for employees hired before July 1, 2009, the date the Act became applicable to private employers with 100 or more employees; LLR is also attempting to interview employees hired prior to July 1. The Act, however, authorizes LLR to interview employers and employees and to investigate “business records relevant to determining compliance with the provisions of” the Act. We have also been in discussions with LLR on this point, asserting our position that the Act only authorizes the inspection of I-9 forms and copies of drivers’ licenses of employees hired on or after July 1, 2009, and the interviewing of employees hired as of July 1.

Coincidentally, on July 1, 2009, the U.S. Department of Homeland Security’s Immigration and Customs Enforcement agency (ICE) announced a new, more aggressive inspection strategy; ICE has also recently hired new inspectors and has targeted 650 businesses for “lead-driven” investigations, including several in the Carolinas.

We are communicating with LLR in an attempt to resolve issues relating to audits under the Act. In the meantime, we urge clients to do the following to ensure compliance with federal and state requirements and to be prepared for audits:

- Designate a lead person and a backup to spearhead immigration compliance and to interface with inspectors.
- Become familiar with the latest version of ICE’s *Handbook for Employers: Instructions for Completing Form I-9*. The handbook can be accessed by [clicking here](#).
- Review the employment verification provisions and potential penalties and audit procedures set out in the Act and in LLR’s proposed regulations, both of which can be accessed by [clicking here](#).

- Conduct a random audit of I-9 forms on an annual basis.
- Train receptionists to contact the lead person or his/her backup immediately—and/or the company’s immigration lawyer—if an immigration inspector arrives unannounced.
- Be polite and respectful when dealing with an inspector, listening more than talking, answering questions but not volunteering information, and taking appropriate notes. This information should be shared with immigration counsel.

Should you have questions regarding immigration compliance or inspections, please contact any member of our Employment and Labor Law Group or any member of our Immigration Team, which consists of [Melissa Azallion](#), [David Dubberly](#), and [David Garrett](#).

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