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ICE turns up heat on I-9s

Premium content from Denver Business Journal - by Heather Draper

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If you own a restaurant or hospitality- or agriculture-related business, you'd better get your I-9s in order.

The Department of Homeland Security's Immigration and Customs Enforcement (ICE) officials are targeting 1,000 businesses nationwide in the next few weeks for compliance with I-9, or employment eligibility verification.

"These inspections will determine whether or not the businesses are violating U.S. employment laws by hiring illegal workers," ICE said in a statement in February. "The inspections will touch on employers of all sizes and in every state in the nation — no one industry is being targeted nor is any one industry immune from scrutiny."

At least 40 businesses in Colorado are expected to get audited, according to Denver attorney **Ann Allott**, founder of Allott Immigration Law Firm. She said some industries are more at risk than others for the audits.

"They'll be targeting restaurants, hotels or anything that involves agrarian work," Allott said.

The ICE audits of Denver-based [Chipotle Mexican Grill Inc.](#) (NYSE: CMG) in December grabbed national headlines. The fast-food chain was forced to dismiss 450 workers in Minnesota who didn't have valid I-9 documents, according to spokesman **Chris Arnold**.

Chipotle also has received notices of inspection from ICE for about 60 restaurants in the Washington, D.C., and Virginia areas, he said.

ICE doesn't release the names of employers or industries being audited, but Allott expects much of the immediate focus to be on northern Colorado, which she thinks is mainly for political reasons.

"They targeted that area because they have community support there to target undocumented workers," Allott said. "It's flat-out racial prejudice."

ICE has a Denver office, opened an office in Colorado Springs in late 2009 and last year moved its operations from Brush to a new, bigger office in Greeley.

ICE spokesman **Carl Rusnok** said the organization routinely makes I-9 compliance pushes.

"This is not unusual," he said. "If you go back in time, we've had these surges periodically."

But Allott said the fervor with which ICE is going after undocumented workers has never been greater.

"I don't know anyone who has a final order of removal against them who hasn't been deported," Allott said. "This government has gone wacko."

ICE more active

Under increasing pressure from the Obama administration to target employers rather than conduct workplace raids, ICE has conducted more I-9 audits and issued more debarments — or exclusions from government contracting — in the last two years than it did during the entire Bush administration, according to a statement in February by **Janet Napolitano**, secretary of the Department of Homeland Security (DHS).

In DHS' fiscal year 2010, which ended in September, ICE brought criminal charges against a record 180 owners, employers, managers or supervisors, up from 114 in FY 2009, according to ICE data.

ICE conducted more than 2,200 I-9 audits in FY 2010, up from about 1,400 in FY 2009, and debarred 97 businesses in FY 2010, up from 30 businesses in FY 2009.

Employers were slapped with \$50 million in financial sanctions in FY 2010, ICE data show, with the average fine exceeding \$110,000.

A total of 392,862 individuals were deported in FY 2010, including 195,772 convicted criminals, up from 389,834 in FY 2009 and 291,060 just two years earlier.

"The number of our deportations has increased yearly for last five years," ICE's Rusnok said.

Allott and other immigration attorneys are trying to get the word out to restaurant owners and others to make sure their employee documents are in order.

"We try to tell our members to do what's right ... to use E-verify," said **Pete Meersman**, president and CEO of the [Colorado Restaurant Association](#). "We're opposed to mandatory E-verify, but we recommend they use it. If you do, it gives you a safe harbor against claims that you are intentionally hiring undocumented workers."

E-verify is an Internet-based system the DHS operates, enabling an employer, using information reported on an employee's I-9, to determine the eligibility of that employee to

work in the United States.

The problem with E-verify is that it can verify only documents; it can't confirm whether the person holding the document is actually the person in the documents, Allott said.

Employment verification via I-9 forms began in 1986, but employers often ignored them, said immigration attorney **Nancy-Jo Merritt** of [Fennemore Craig](#) in Phoenix.

"For long periods of time there was no enforcement," she said. "In the last four or five years, the government has realized it is a tool to be used to ensure employers are following the law."

Merritt represents employers regarding immigration laws and said she's been getting two kinds of calls lately: one, where employers are worried about getting audited and want to make sure they're in compliance with the law, and the other when the employer says the government is coming in three days to do an audit.

"Those cases are a little hectic," Merritt said. "When they say three days, they mean three days."

Her firm performs independent I-9 audits and cleans up company verification documents, and also trains companies about how to remain in compliance.

Merritt said that questions business owners should ask themselves regarding employment verification include:

- What kind of documentation training have we given the staff?
- Who is responsible for I-9s?
- How many I-9s do we have?
- Is the E-verify system working well for us?

The surge in I-9 audits stems from a convergence of factors, Merritt said, including high unemployment, a wave of anti-immigration sentiment and a fear of "open borders."

"These are issues that really have nothing to do with immigration," she said. "It is highly politicized. It shows a need for comprehensive immigration reform that will have to take into account the people who came in during those years when there was no enforcement."