# Subject-Matter Index

## A

- **acquisitions**, see Mergers and acquisitions
- **adjustment of status**
  - unauthorized employment, consequences of, 27
- **antidiscrimination provisions**, see Discrimination

## Arizona legislation

- employment verification and related laws, 233, 282–83, 296, 398

## Arkansas legislation

- affecting government contractors, 274–75, 287

## asylees

- employment verification, 221–22

## attorneys

- ethical issues in representing employer
  - ICE worksite investigations, 49–56
  - internal investigations, 445–48

## audits, internal, see I-9 form and compliance

## B

- **B-1 / B-2 nonimmigrants**
  - risks of improper classification, 219

## background checks

- I-9 compliance, 242

## Basic Pilot Program, see E-Verify Program

## best practices

- checklists and bullet points, 322–30
- IMAGE, see IMAGE program
- Wal-Mart model, 339–40
- consent decree, 333–38

## Bono Amendment

- correction of technical infractions and “good-faith compliance” defense, 212–15

## Colorado legislation

- employment verification and related laws, 64–66, 233, 275–76, 279, 281–82, 288, 293, 297, 396

## compliance, see I-9 form and compliance

## constructive knowledge

- Generally, 374, 399–403
- appearance or accent, impermissible inference, 272
- bases for ICE investigation, 181–82
- case examples, 400–02
- DHS final rule, 402–03
- E-Verify program, concerns raised by, 18
- independent contractors, 31, 58–59
- interpretation under IRCA, 5–6
- labor certification, filing of, 50–52
- personal liability of corporation’s agent, 72–73
- subcontractors, 399
- unlawful hiring, constructive knowledge sufficient for RICO predicate act, 303–04

## criminal penalties

- Generally, 101–11, 211–12, 377, 392
- false statements
  - on I-9 form, 26–27
  - *Tarrasco* indictment, 621–29
- forfeiture, 107–08, 425
- good faith, 109–10
- harboring, 101–05, 423–24
- case law examples, 393–94
  - *Pereyra-Gabino* order on motion to dismiss indictment, 635–43
  - as RICO predicate act, 103, 302–03, 418–19
  - *Tarrasco* indictment, 621–29
  - *Wolnitzek* information, 631–33
- identity theft, aiding and abetting, 425
- IRCA misdemeanor violations, 422
- misdemeanors under INA §274A, 108–09
- money laundering, 105–07, 424
- prosecutorial discretion, 109
- punitive aspects of civil enforcement, difficult to distinguish from criminal enforcement, 168–76
- summary of penalties, 70–74
- trend toward criminal sanctions, 13–15, 317
- unlawful hiring, 422
  - as RICO predicate act, 303–04
- who can be charged, 426

## citizenship discrimination, see Discrimination

## civil fines, see Sanctions

## civil RICO actions, see Racketeer Influenced and Corrupt Organizations Act
Databases

Databases

See also E-Verify program; IMAGE program; Social Security Number Verification System

Merger of immigration and criminal databases, unreliability of data, 145–50

National Crime Information Center (NCIC) database, 146

Debarment

From federal procurement programs, 427

From H-1B or PERM program, 51, 245–46

For violation of Missouri law, 276, 290

Discrimination (citizenship- or national origin-based)

August 2007 no-match regulation, concerns, 196–97

Burden of proof, 217–18

Contact information, 33

Employer sanctions as cause, GAO report, 38

IRCA antidiscrimination provisions, 10–11, 272

Office of Special Counsel responsibilities, 416

Pre-employment inquiries, 220–21

Procedures for filing complaint, 417

Documentation, see I-9 form and compliance

Driver’s licenses

REAL ID Act, generally, 24–25

State legislation, 25

Due diligence, see Mergers and acquisitions

E

E-Verify program


Compared to SSNVS, 29

Considerations before using, 235

Contact information, 32

Emerging issues, 235–37

Judicial analysis, 237

Political aspects

Expiration and extension, 238

Future of program, 21

Push for enrollment, 233–35

Yale-Loehr congressional testimony, 39–40

Procedure, 17–18, 231–32

State-level requirements, 233

Timeliness and accuracy, 18–19

USCIS publications

Fact Sheet, 581

Q & A for employers, 583–85

Weaknesses, 20

Employment authorization

See also I-9 form and compliance; Verification of employment authorization

Expiration, 360–62

Interim authorization for H-1Bs and L-1s, 220

Internal tracking, sample spreadsheet, 461

Employment verification, see Verification of employment authorization

Enforcement, see Worksite enforcement

Ethics, see Attorneys

F

False statements, see Criminal penalties

Fines, see Criminal penalties; Sanctions

Forfeiture

Civil, see Sanctions

Criminal, see Criminal penalties

Fourth Amendment

Defective warrants, litigation, 150–60

Privacy expectations and immigration raids, 113–77

Fresh Del Monte Produce

Worksite enforcement action, 59

G

Garcia Labor Companies

Worksite enforcement action, 61, 395

George’s Processing Inc.

Worksite enforcement action, 59–60

Georgia legislation

Employment verification and related laws, 22, 64–66, 233, 275–76, 289, 396

Getahun v. OCAHO

Employment verification of asylees, 221–22

Golden State Fence Company

Worksite enforcement action, 90, 395

Good faith, see I-9 form and compliance
H

H-1B nonimmigrants
- classification as independent contractors, improper, 219
- interim employment authorization
  - 240- and 90-day rules, 220
- porting employees, 220, 363

handbooks
- Guide to Selected U.S. Travel and Identity Documents (ICE), 545–67
- Handbook for Employers: Instructions for Completing the Form I-9 (USCIS)
  - full text, 497–543
  - summary, 381–86, 411–12
- Social Security Number Verification System Handbook (SSA), 587–620

harboring, see Criminal penalties

Hazelton (PA) ordinances
- challenges, 160–68

Hoffman Plastic
- impact, 417–18

HV CONNECT, Inc.
- worksite enforcement action, 60

I

I-9 form and compliance
- Generally, 199–200, 203–24, 270–73
  - basic requirements, 206–07, 226–27
  - checklist for compliance, 410
  - completing form
    - common mistakes, 68–70
    - corrections, 372
  - documentation
    - expired documents, 366
    - lost documents, presentation of receipts, 207–08, 368–70
    - number and type required, 215–17, 351, 365–66, 381–82, 527–28
    - illustrations and descriptions, 352–56, 529–38, 545–67
    - photocopying and scanning documents, 210, 227
  - electronic I-9s, see subhead: Storage and retention [in this heading]
  - elements of a compliance program, 206–12, 225, 427
  - goals in developing compliance program, 410

ICE raids
- good faith, 9, 74, 205, 212–15
- avoiding criminal prosecution, 109–10
- Bono Amendment, 212–15
- substantive vs. technical/procedural failures, comparison chart, 387
- USCIS interim guidelines, 569–79
- inspections (ICE), see Worksite enforcement
- internal audits
  - advisability, 30–31, 97–98, 200, 222
  - checklist, 341–48
  - ethical obligations of counsel, 52–53
  - sample report, 459
  - sample spreadsheet, 461
  - structure and practice tips, 66–68, 68–70
- internal investigations, see Investigations
- introduction under IRCA, 4–5, 203–04
- mergers and acquisitions, see Mergers and acquisitions
- misrepresentations
  - effect on continued employment, 29–30
  - as violations of law, 26–27
  - penalties and fines, see Criminal penalties;
  - Sanctions
  - practice pointers, 218–22, 349–79
  - recruiter obligations, 32
  - rehires, 210
- reverification obligation, 6–7, 208, 219–20
- revision of form by DHS, 12–13, 350–51, 381–86
- staffing, centralization of authority to verify employment, 218
- storage and retention, 208–09, 371
- centralization of storage, 219
- electronic I-9s, see subhead: Storage and retention [in this heading]
- E-Verify, see E-Verify program
- IMAGE, see IMAGE program
- Social Security number trace services, 242
- SSNVS, see Social Security Number Verification System
- transferred employees, 208
- USCIS’s Handbook for Employers: Instructions for Completing the Form I-9
  - full text, 497–543
  - summary, 381–86, 411–12

ICE Mutual Agreement between Government and Employers, see IMAGE program

ICE raids
- see Worksite enforcement

Published by AILA Publications
Idaho legislation
employment verification and related laws, 396

identity documents
see also I-9 form and compliance, subhead:
Documents
Guide to Selected U.S. Travel and Identity
Documents (ICE), 545–67

identity theft, see Criminal penalties

IFCO Systems
worksite enforcement action, 7, 27, 61

Illinois legislation
employment verification and related laws, 282–
84, 297, 398

IMAGE program
Generally, 22–23, 131–32, 222–23, 238–43,
414–15
best hiring practices, 239–41, 415–16
contact information, 33

Immigration Reform and Control Act of 1986
(IRCA)
Generally, 3–33, 203–04
employee issues, 24–27
employer responsibilities under IRCA, 4–12
FAQs from employers, 28–32
misdemeanor violations, see Criminal penalties
personal liability, 12
recent developments, 12–24
Yale-Loehr congressional testimony, 36–37

independent contractors and subcontractors
Generally, 31
contract language, 98
determination of, 271
due diligence questions for acquiring companies,
260
vs. employees, 58–59
good-faith compliance efforts, 109–10
“knowing” hiring violations through contract,
210–11, 399
risks of mislabeling, 219
Wal-Mart best practices model, 339–40
certification of, 333–38

interim employment authorization, see
Employment authorization

internal audits, see I-9 form

investigations, internal
see also Worksite enforcement, subhead:
Investigations (ICE)
ethical considerations, 445–48
post–ICE raid investigations, practical pointers,
429–31
Michael Bianco, Inc.
worksite enforcement action, 60, 395

Missouri legislation
affecting government-aid recipients, 279–81, 294
affecting government contractors, 276–77, 290

Mohawk Industries
RICO litigation, 307–09

money laundering, see Criminal penalties

National Crime Information Center (NCIC), see Databases

National Fugitive Operations Program (NFOP)
establishment of ICE program, 145–50

national origin discrimination, see Discrimination

“no match” letters
Generally, 7–9, 132–33, 187–201
August 2007 safe harbor rule (72 FR 45611)
discrimination concerns, 196–97
employer obligations and procedures, 8, 31–32,
62–64, 190–96, 374–75, 403–07
litigation against rule, 8–9, 63–64, 193–96, 205,
373, 409
penalties, 408
use of SSN Verification System, 198–99

Oklahoma legislation
employment verification and related laws, 233,
276–78, 291, 397

“Operation Return to Sender”
home ICE raids, 144–60

“Operation Wagon Train,” see Swift & Company

penalties, see Criminal penalties; Sanctions

Pennsylvania legislation
affecting government-aid recipients, 278–79, 295

Pereyra-Gabino
order on motion to dismiss harboring indictment,
635–43

privacy expectations
ICE raids, 113–77

Quality Service Integrity, Inc.
worksite enforcement action, 60, 394

Racketeer Influenced and Corrupt Organizations Act (RICO)
applicability to immigration offenses, 95–97,
301–11, 426
harboring as predicate act, 103, 302–03, 418–19
precautions when conducting internal audit, 341
unlawful hiring as predicate act, 303–04

raids, see Worksite enforcement, subhead: ICE raids

REAL ID Act
driver’s license applications, 24–25
state legislation in response to, 25

recruiters
I-9 obligations, 32
vs. smugglers, 73

reverification, see I-9 form and compliance

RICO, see Racketeer Influenced and Corrupt Organizations Act

Rosenbaum-Cunningham International
worksite enforcement action, 60

safe harbor, see “No match” letters, subhead:
August 2007 DHS rule

sanctions
civil fines, 13–14, 211–12, 372
civil forfeiture, 107–08
cooperative efforts between businesses and
government, caveats, 77–99
criminal penalties, see Criminal penalties
debarment, see Debarment
personal liability of agent, 12, 70–73
precautions when conducting internal audit, 341
Yale-Loehr congressional testimony, 35–47
Basic Pilot Program, 39–40
history of sanctions, 36–39
recommendations, 43–46
systemic problems, 40–43

Sarbanes-Oxley Act
due diligence issues, 247

Published by AILA Publications
Social Security Administration (SSA)

Social Security Administration (SSA)
contact information, 33
E-Verify, see E-Verify program
information sharing with ICE, 7–8
Social Security numbers (SSNs)
“no match” letters, see “No match” letters
not required for employment, 30, 199, 383
SSN Verification System, see Social Security Number Verification System
trace searches, 242

Social Security Number Verification System (SSNVS)
Generally, 23–24, 241–43, 413
alternatives, 242–43
compared to E-Verify, 29
limitations on use, 241
penalties for misuse, 242
SSNVS Handbook (SSA), 587–620
timing, 29
usage in light of August 2007 no-match safe-harbor regulation, 198–99

state and local legislation
see also specific states and localities
employment eligibility verification, 64–66, 269–300, 396–98
E-Verify implementation, 21–22, 233
government-aid recipients, state law affecting, 278–81, 293–95
government contractors, state law affecting, 274–78, 287–92
future of local immigration raids, 160–68
joint resolution opposing REAL ID Act, 25
local ordinances, list of, 269

Stucco Design, Inc.
worksite enforcement action, 61

subcontractors, see Independent contractors and subcontractors

successor corporations, see Mergers and acquisitions

Sun Drywall and Stucco, Inc.
worksite enforcement action, 395

Swift & Company
worksite enforcement actions (Operation Wagon Train), 4, 20, 60, 91, 124–44

Tarrasco Steel
indictment, 621–29
worksite enforcement action, 60

temporary protected status (TPS)
automatic extensions, 367

Tennessee legislation
employment verification and related laws, 233, 276–78, 282–83, 292, 299, 398

Texas legislation
timeline, 392–93
verification of employment authorization affecting government-aid recipients, 278–79, 295

trade documents
see also I-9 form and compliance, subhead: Documents
Guide to Selected U.S. Travel and Identity Documents (ICE), 545–67

Tyson Foods
RICO litigation, 305–06, 309–11
worksite enforcement action, 85–89

U

unfair employment practices, see Discrimination

unlawful hiring, see Criminal penalties

U.S. Immigration and Customs Enforcement (ICE)
see also Worksite enforcement
ICE Mutual Agreement between Government and Employers, see IMAGE program
information sharing with SSA, 7–8

Utah legislation
driver’s licenses, 25

V

verification of employment authorization
see also I-9 form and compliance
Generally, 16–24
asylees, 221–22
E-Verify, see E-Verify program
IMAGE, see IMAGE program
independent contractors, see Independent contractors and subcontractors
Jordan Commission, 38–39
legislation, see State and local legislation; specific states and localities
recommendations, Yale-Loehr congressional testimony, 43–47
SSN Verification System, see Social Security Number Verification System
technical and procedural infractions, 212–15
comparison chart, 387
Visa Waiver nonimmigrants
risks of improper classification, 219

W

Wal-Mart
best practices model, 339–40
consent decree, 333–38
worksite enforcement action, 88–89

West Virginia legislation
employment verification and related laws, 282–84, 300, 397

Wolnitzek and Spectrum Interiors
harboring for commercial advantage, criminal information, 631–33

work authorization, see Employment authorization; I-9 form and compliance;
Verification of employment authorization

worksite enforcement
Generally, 57–75
April 2006 ICE initiative, 58–62
businesses’ cooperation with government, caveats, 77–99
ICE raids
Generally, 179–85
counseling employers and/or workers, 184–85
ethical considerations, 53–55
criticisms, 27
home ICE raids, “Operation Return to Sender,” 144–60
post-raid internal investigation, 429–31
as pretext for criminal enforcement, 138–40, 157–59
privacy expectation, 113–77
warrants and scope of ICE powers, 133–44, 182–83

Zirkle Fruit Company
inspections, 52–53, 208–09
ICE forms and sample notices
Business Entity Questionnaire, 469
Employee Information Certification Form, 471
How to Prepare for an ICE Business Inspection, 467
Notice of Inspection, 463–64, 465–66
Notice of Intent to Fine, 483–94
Notice of Suspect Documents, 479–80
Notice of Unauthorized Aliens, 481–82
subpoenas, 473, 475–77
representing employers
checklist, 457
instructions to client, 455
key issues, 437–41
outline, 443–44
investigations (ICE), 179–82
see also Investigations, internal
ethical issues in representing employers, 49–56
internal investigations, see Investigations
local immigration raids, future of, 160–68
practice tips for employers, 61–62
punitive aspects of civil enforcement, difficult to distinguish from criminal enforcement, 168–76
specific enforcement actions, 4, 7, 20, 27, 59–61, 84–91, 124–44, 394–95
state and local legislation, see State and local legislation; specific states and localities
statistics, 376–77, 390–91

Y–Z

Yale-Loehr, Stephen
congressional testimony on employer sanctions and employment verification, 35–47

Zirkle Fruit Company
RICO litigation, 304–05