

AILA Worksite Enforcement Online Course Outline

The AILA Worksite Enforcement Online Course is designed to provide a comprehensive review of worksite enforcement issues to those who are new or are eager to learn more about this practice area. It covers the basics but also several intermediate topics, and additionally offers an in-depth look at how to effectively advise clients. This includes how to advise clients on the I-9 form and acceptable documents (including all of the COVID exceptions), the connection and strategies of E-Verify, how to manage an ICE audit, how to conduct internal audits, DOJ challenges and concerns within worksite and various other topics such as immigration policies and M&A. If you are new to the field or represent employers and would like to learn compliance and enforcement practices that have worked for expert practitioners, this course is for you!

MODULE 1: THE FORM I-9: PROPER COMPLETION, RETENTION, REVERIFICATION, AND ACCEPTABLE DOCUMENTS

Faculty:

Allen Orr, AILA President, Washington, DC

Helen L. Konrad, AILA Verification and Documentation Liaison Committee Vice-Chair, Richmond, VA

Katie Nokes Minervino, Portland, ME

Module Outline:

- **Video:** Welcome to the Worksite Enforcement Online Course!
- **Reading:** How to Take This Course
- **Video:** Overview of the Form I-9
 - Who Completes the Form I-9 and Why?
 - Timing
 - Proper Form Version
 - Storage
 - Retention
- **Video:** Section 1 of the Form I-9
 - Who and When
 - Field-by-Field Guidelines
- **Video:** Section 2 of the Form I-9 and Lists of Acceptable Documents, with Ethical Considerations
 - Who, When, and Where
 - Employer's Duty in Reviewing Documents
 - Field-by-Field Guidelines
 - Standard Document Examples from the Lists of Acceptable Documents
 - Keeping Copies (or Not)
- **Video:** Receipts and Complex Documents
 - Receipts for Lost, Stolen, Damaged Documents
 - Documents Not on the Lists of Acceptable Documents:
 - Expired Permanent Resident Cards
 - Expired EAD Cards
 - ❖ 180-Day Extension
 - ❖ Temporary Protected Status (TPS) Extension
 - ❖ STEM Extension

- ❖ Deferred Action for Childhood Arrivals (DACA)
 - Asylees and Refugees
 - Curricular (CPT) and Optional Practical Training (OPT)
 - J-1 Issues
 - H-1B Portability
 - H-1B Pending Extension
 - Minors and Special Placement
- **Document:** Sample I-9s for a Variety of Scenarios
- **Document:** Form I-9
- **Video:** Section 3 Updates, Rehires, and Reverification
 - Reverification
 - Rehire
 - Name Change
- **Exercise:** Fill Out I-9s for Individuals Who Present Sample Documentation
- **Hypotheticals**
- **Resources List:**
 - 8 CFR §274a.2
 - Form I-9 and Instructions
 - M-274 Handbook for Employers: www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274
 - I-9 Central: www.uscis.gov/i-9-central
 - N. Kersey *et al.*, “I-9 Compliance: Basics and Beyond” *Immigration Practice Pointers, 2021–22 Ed.* (AILA 2021): <https://ailalink.aila.org/#search/result/view/95257>
 - Bahal, “Counseling Clients on Form I-9: Completion and Best Practices” *Immigration Practice Pointers, 2019–20 Ed.* (AILA 2019): <https://ailalink.aila.org/#search/result/view/81584>

MODULE 2: E-VERIFY

Faculty:

Dawn M. Lurie, Washington, DC

John Fay, Phoenix, AZ

Amy L. Peck, AILA Verification and Documentation Liaison Committee Chair, Omaha, NE

Module Outline:

- **Video:** Overview of E-Verify
 - What Is E-Verify?
 - E-Verify’s Relationship to the Form I-9
 - E-Verify Employer Agents Versus Direct Use
 - Driver’s License Verification and the RIDE Program
 - Photo Match Tool
 - Historic Record Reports
 - Memorandum of Understanding with Other Federal Agencies
- **Video:** When Is E-Verify Mandatory?
 - Federal Contractors and E-Verify
 - What Is the “FAR Clause” (48 CFR, Subpart 22.18)?

- When Is It Applicable?
- E-Verify Use Mandated by States
 - Public Versus Private Employers
 - List of States that Mandate E-Verify
 - Examples of States that Require E-Verify or an Alternative
- **Document:** E-Verify Federal Contractors Webpage at www.e-verify.gov/employers/federal-contractors
- **Video:** Enrollment with E-Verify
 - Enrollment Process
 - Checklist
 - Training
 - Memorandum of Understanding (MOU)
 - Parties to the MOU
 - No Adverse Action During Pending Tentative Nonconfirmations (TNCs)
 - No Pre-Screening
 - No Civil Penalties
 - Signing Up for E-Verify and Access Methods
 - Use of an E-Verify Employer Agent
 - Direct Use
 - Administrative Roles and Hiring Sites Within E-Verify
 - Program Administrator
 - Users
 - Hiring Sites
- **Video:** E-Verify Case Actions and Requirements
 - TNCs
 - Further Action Notice
 - Case Closures
- **Video:** E-Verify Compliance and Enforcement
 - Monitoring and Compliance
 - Desk Reviews
 - Onsite Reviews
 - Priority for Closing Cases
 - Suspension or Termination
- **Exercise:** Top Questions in E-Verify for a Sample Company
- **Hypotheticals**
- **Resources List:**
 - USCIS E-Verify Website: [Job Aid - Create and Submit a Case \(e-verify.gov\)](http://www.e-verify.gov)
 - The E-Verify Manual (M-775) [E-Verify User Manual](#)
 - Job Aid for E-Verify Users—Complete Photo Match: www.e-verify.gov/sites/default/files/everify/jobaid/JobAidEvUsersCompletePhotoMatch.pdf
 - Sample MOU <https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf>
 - Quick Reference Guide for E-Verify Enrollment <https://www.e-verify.gov/book/export/html/3806>
 - Job Aid for E-Verify Users—Process and Refer a Tentative Nonconfirmation (TNC) [Process and Refer a Tentative Nonconfirmation \(TNC\) Job Aid \(e-verify.gov\)](#); Job Aid for E-Verify

- Users—Close a Final Nonconfirmation Case [Job Aid for E-Verify Users: Complete Review Case - Are you Sure? Alert](#); Sample Further Action Notices (FAN) [Sample FAN](#)
- State E-Verify Laws <https://www.lawlogix.com/e-verify-map/>
 - Videos from USCIS Website

MODULE 3: ICE AUDIT LIFECYCLE

Faculty:

Maggie M. Murphy, AILA Board of Governors, Austin, TX

Josie Gonzalez, Oxnard, CA

Tejas N. Shah, Chicago, IL

Module Outline:

- **Video:** Notice of Inspections (NOI): What to Do When ICE Comes Knocking!
 - Site Visit Policies and Protocols
 - Who Will Talk to ICE and What They'll Say
 - The Anatomy of a NOI
 - Timing:
 - Three-Day Waiver
 - Asking for Additional Time
- **Video:** Working with Your Client to Respond to the NOI
 - Is the Company Name Correct and Does It Have Employees?
 - Review the Scope of the NOI: Specific Legal Entity/Location
 - Review of Employees and Retention Period
 - Active Only or Termed Employees
 - Requested Documents and Review Thereof
 - Should Your Client Make Changes to the I-9s Before Submission?
 - Postings or Other Notifications
 - Is There a Union to Notify or Involve?
 - Negotiating the Method of Transmission
 - Keeping a Record of What Is Provided
- **Exercise:** Review and Respond to an NOI
- **Video:** Ethics in Responding to an NOI
 - Client Confidentiality/Investigation
 - Candor to Tribunal/ICE
 - Possible Criminal Violations/Co-Counsel
 - Who Do You Represent?
 - Missing I-9s/I-9 Corrections
- **Video:** ICE Review of NOI Response and Employer Next Steps
 - ICE Fine Matrix/Potential Fines
 - Notice of Technical and Procedural Failures
 - Notice of Suspect Documents
 - Notice of Intent to Fine
 - Review Documents and the Process of Working with the Employer to Correct/Defend and Negotiate with ICE
 - Office of the Chief Administrative Hearing Officer

- **Document:** I-9 Inspection Process Flowchart
- **Documents:**
 - ICE Fine Matrix (Note: updated yearly based on the inflation adjustment)
 - Sample Notice of Technical and Procedural Failures
 - Sample Notice of Suspect Documents
 - Sample Notice of Intent to Fine
 - Sample of Notice of Inspection Results
 - Warning Notice
- **Hypotheticals**
- **Resources List:**
 - ICE Form I-9 Inspection Overview: www.ice.gov/factsheets/i9-inspection

MODULE 4: INTERNAL I-9 AND E-VERIFY AUDITS

Faculty:

Anna L. Scully, Mobile, AL

Kevin Robert Lashus, Austin, TX

Bruce E. Buchanan, Online Course Committee, Nashville, TN

Module Outline:

- **Video:** Should an Employer Perform an Internal I-9 Audit? Pros and Cons
 - **Pros**
 - Locate Substantive I-9 Errors
 - Correct as Many as Possible
 - Do You Correct Technical Errors?
 - What Is the Difference Between Substantive and Technical Errors?
 - Determine Missing I-9 Forms and Complete New Ones
 - If Desired (and not Using E-Verify and Retaining Documentation), Review Documentation to Determine Unauthorized Employees
 - **Cons**
 - When Unauthorized Employment Is Discovered in the Audit, then Employer has this Knowledge: Employer's Obligation to Act, What Else Can be Done
 - Cost of Internal I-9 Audit vs. Chance of ICE Audit
 - Problematic If and When Some Employees Do Not Cooperate
- **Video:** How to Perform Internal I-9 Audits: Common Errors and How to Correct
 - Who Can Fix Sections 1, 2, and 3?
 - What If the HR Representative Who Completed Section 2 Is Gone?
 - How to Fix Errors or Omissions
 - Possible Differences in Correcting Minor vs. Major Errors
 - What Is Over-Documentation?
 - How to Fix Over-Documentation
 - What Are You Auditing?
 - I-9s, Documents, E-Verify
 - What Happens If Employees Are Represented by a Union?
 - Collective Bargaining Obligations
 - What Happens If One Only Has Copies of I-9 Forms?

- **Documents:** Checklist for I-9 Audit, Fraudulent Permanent Resident Cards and Other Identification
- **Exercise:** Identify Errors or Omissions in Selected I-9 Forms, How to Correct Them
- **Video:** Questions in Type of Internal I-9 Audit
 - Partial I-9 Audit vs. Full I-9 Audit
 - Advantages of a Partial Internal I-9 Audit
 - Disadvantages of Partial I-9 Audit
 - If Partial, Number or Percentage of I-9s Reviewed
 - If Partial, Who Performs the Rest of the Review?
 - Current Employees Versus All Employees (Including Those Terminated)
 - Internal I-9 audit for Immigration Compliance Certification
- **Reading:** Completing an I-9 Self-Audit
- **Video:** Documenting Findings of an Internal I-9 Audit
 - Memo/Note Re: Reasons for Corrections
 - Memo to Employer/Client
 - Drafting Immigration Compliance Policy
 - Training/PowerPoints After Internal I-9 Audit
- **Video:** Ethics of Internal I-9 Audit
 - Obligation to Report Discrepancies
 - What If Employer Declines to Take Action on Undocumented Workers?
 - Importance of Attorney/Client Privilege
- **Video:** E-Verify Issues and How to Remediate
 - Are There Employees That Were Not Processed Through E-Verify?
 - If So, Why?
 - Can These Issues Be Remedied?
 - If So, How?
 - Is Employer Employing Individuals With Final Nonconfirmations?
 - If So, Why?
 - How to Remedy
 - Do You Have Any Open Cases at E-Verify?
 - If so, Can You Remedy Them?
- **Document:** How to Get Ready for ICE Audit
- **Hypotheticals**
- **Document:** I-9 Audit Spreadsheet
- **Resources List:**
 - Guide to Selected U.S. Travel and Identity Documents (M-396; can be ordered from CBP.gov)
 - Guidance for Employers Conducting Internal Form I-9 Audits: ICE and Office of Special Counsel (OSC)/IER [download \(justice.gov\)](#)
 - “NLRB Finds Employer Required to Bargain with Union over Effects of Its Decision to Require Employees to Complete New I-9 Forms” [NLRB Finds Employer Required to Bargain with Union over Effects of Its Decision to Require Employees to Complete New I-9 Forms - ILW.COM Discussion Board](#)

MODULE 5: DOJ IMMIGRANT & EMPLOYEE RIGHTS SECTION (IER)

Faculty:

Avram E. Morell, New York, NY

David Grunblatt, New York, NY

Mary E. Pivec, Woodbridge, VA

Module Outline:

- **Video:** Background and Overview of IER
 - Jurisdiction of IER
 - IER Rules:
 - Categories of Prohibited Discrimination
 - ❖ Compare: Section 1981/Alienage Discrimination
 - ❖ Prohibited Discrimination in the I-9, EV Process, and PERM Recruitment Process
 - Categories of Protected Individuals
 - ❖ Recent Emphasis on Reverse Discrimination and Protecting the Rights of U.S. Citizens
 - IER Resources
 - ❖ Technical Assistance Letters
 - ❖ Resources on Website
 - ❖ Hotline
- **Document:** EEOC v. IER Chart
- **Video:** IER Enforcement Proceedings
 - Covered Employment Actions
 - Statute of Limitations
 - Categories of IER Investigations
 - Anatomy of an Investigation: What Actually Happens
 - How Cases Come to IER's Attention
 - ❖ Individual Charge
 - ❖ Independent Investigations by IER
 - ❖ Referrals from Government Agencies / E-Verify
 - Charging Document
 - Discovery Questionnaire
 - Standards and Burdens of Proof
 - ❖ Direct Evidence of Intent Test
 - ❖ Circumstantial Evidence of Intent: The *McDonnell Douglas* Shifting Burdens Test
 - ❖ Pattern or Practice Theory: The *Teamsters*' Test
- **Video:** Sanctions, Negotiations, and Post-Investigation Activities
 - IER Findings
 - Nature and Forms of Relief
 - Current Civil Money Penalties
 - IER Monitoring
 - Settlement Negotiations
 - DOJ Office of the Chief Administrative Hearing Officer (OCAHO) De Novo Hearing
- **Video:** Advising on IER Issues in the Hiring Process
 - Structuring the I-9 Process

- What You Can Put on Your Forms
- Job Advertisements
- Job Applications
- What You Can Ask Applicants During the Interview
- Questions by Recruiters Relating to Sponsorship Needs
- Prohibited PERM Practices
- **Video:** Hot Topics and Ethical Issues with IER DOJ
 - Export Control
 - Security Clearances
 - Reverse Discrimination and the PERM Recruitment Process: *U.S. v. Facebook*
 - TPS, DACA, and Other Employment Documentation in Flux
 - Investigating Fake Document Whistleblower Tips
 - Responding to National Origin/Citizenship Status Preferential Treatment and Harassment Complaints
- **Exercise:** Complete IER Compliance Proficiency Test
- **Document:** Complying with the Anti-Discrimination Provisions of IRCA
- **Hypotheticals**
- **Resources List:**
 - Department of Justice, Best Practices for Recruiting and Hiring Workers
 - Department of Justice, IER v. EEOC Comparison Flyer
 - Department of Justice, Employer Best Practices During Worksite Enforcement Audits
 - Department of Justice, Employment Information Regarding Afghan Special Immigrant Visa Holders and Parolees
 - Department of Justice, Frequently Asked Questions About Name/Social Security Number “No-Matches”
 - Department of Justice, How Employers Can Avoid Discrimination in the Form I-9 and E-Verify Processes
 - Department of Justice, IER Information for Employers on How to Avoid Discrimination in E-Verify
 - Department of Justice, Information for Employers About Citizenship Status Discrimination
 - Department of Justice, Information for Employers Hiring Citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau
 - Department of Justice, Information for Employers on Temporary Protected Status and Deferred Enforced Departure
 - Department of Justice, Joint IER-ICE Internal I-9 Audit Guidance for Employers
 - Department of Justice, Name and Social Security Number (SSN) “No-Matches” Information for Employers
 - Department of Justice, Refugees and Asylees Have the Right to Work Information for Employers
 - Department of Justice, Understanding the INA's Anti-Discrimination Provision
 - Department of Justice, Unlawful Employment Discrimination Based on Citizenship and National Origin

MODULE 6: TIPS AND TRICKS / OTHER THINGS YOU NEED TO KNOW

Faculty:

Video 1 (Electronic I-9s): Wendy Padilla-Madden, Hoover, AL

Video 2 (M&A): Angelo A. Paparelli, Los Angeles, CA

Video 3 (Constructive Knowledge): Richard A. Gump, Jr., Dallas, TX

Video 4 (IMAGE): Patricia A. Bollman, New Orleans, LA

Video 5 (Remote Workers): John Fay, Phoenix, AZ

Video 6 (Policy): Lindsay Chichester Koren, Orlando, FL

Module Outline:

- **Video:** Electronic I-9 Programs
 - Advantages and Disadvantages of Electronic I-9 Programs
 - Regulatory Requirements for Electronic I-9 Programs
 - Interplay With E-Verify
 - Due Diligence for a Company Considering an Electronic I-9 Program
 - Compliance With Regulations
 - Technical Requirements
 - Integration With Existing Systems
 - Cost Structure
 - Migration
- **Video:** I-9 Issues in Mergers and Acquisitions
 - Regulatory Provisions:
 - Successor Can Choose to Adopt I-9s or Execute New I-9s Upon Close
 - Concept of Close of Transaction as New “Date of Hire”
 - Role for Lawyer Representing Buyer in Pre-Close Due Diligence
 - Understanding the Nature and Timeframes of the Transaction
 - Due Diligence Options
 - ❖ None: Reps and Warranties
 - ❖ Review of Policies
 - ❖ Sampling of I-9s
 - ❖ Full I-9 Review with Liability Assessment
 - ❖ Review of Technical Paperwork Errors, Review of Validity of Underlying Documents, or Both
 - What If the Seller Is Currently or Was Previously Subject to ICE Enforcement Action?
 - Practical and Ethical Issues in Advising Companies About Options in Mergers and Acquisitions (M&A) Deals If Due Diligence Reveals Unauthorized Workers
 - Lawyer’s Role When Representing Seller
- **Video:** Responding to Hotlines, SSA No–Match Letters and Other “Constructive Knowledge” Situations
 - Range of “Constructive Knowledge” Situations
 - Regulatory Requirement: Employer Is Required to Respond Reasonably When Receiving Constructive Knowledge of Unauthorized Worker
 - Determining Whether Information Constitutes Constructive Knowledge
 - Reasonable Response Protocols
 - ❖ Investigation
 - ❖ Documentation
 - Specific Constructive Knowledge Situations
 - Internal Allegations/Hotline Tips

- Information From Internal Audits
 - External Allegations
 - Law Enforcement Contact Regarding Stolen Identity
 - Documentary Inconsistencies in Benefits Claims, Multiple Names and Other Contradictory Employee Information
 - SSA No–Match Letters and IRS Notices
 - ACA and Other Benefits Program Notices
- Ethical Issues for Lawyers Representing Clients in “Constructive Knowledge” Situations
- **Video:** The IMAGE Program: Is There Ever a Good Reason to Enroll?
 - Overview and Background of IMAGE Program
 - Overview of an ICE IMAGE Audit
 - Pros and Cons of Enrolling in IMAGE
 - Defensive IMAGE: Role of IMAGE in Worksite Enforcement Negotiations
- **Video:** Remote Workers and I-9 Completion
 - Statutory and Regulatory Provisions Regarding I-9 Verification and In-Person Review of Original Documents
 - USCIS and ICE Interpretations of In-Person Requirements
 - Temporary COVID Accommodations for I-9 Review
 - Partial Relaxation of In-Person Review Requirements
 - Limitations to Accommodations Under Policy

Video: Pulling It All Together: Developing a Right–Sized I-9 Policy for Your Client

- Purpose of I-9 Policy
- Components of Policy
 - Ownership of I-9 Process
 - I-9 Timelines and Process at Time of Hire
 - Reverification Process
 - Retention
 - Quality Control and Self–Audits
 - Training
 - Escalation of Problem Issues
 - Pre–Termination Safeguards and Minimizing Liability for Discrimination

Exercise: Hypos and Discussion Regarding Various Constructive Knowledge Scenarios

Documents: Key Components of a Corporate I-9 Policy, Checklist of I-9 Compliance Questions for a Client Considering IMAGE

Hypotheticals

Resources List:

- M-274 Handbook for Employers
- I-9 Central
- AILA Article on Electronic I-9 Systems [AILA - Advising Your Clients on the Selection of an Electronic I-9 Software Provider](#)
- Link to IMAGE Program [IMAGE | ICE](#)
- Marketa Lindt, Uncovering the Ticking Time Bomb - Identifying Immigration Compliance Issues in Corporate Due Diligence, in AILA's Guide to Worksite Enforcement & Corporate Compliance 245 (2008 ed.)

Worksite Enforcement Online Course Committee

Sharon R. Mehlman, Online Course Committee Chair, San Diego, CA

Bruce E. Buchanan, Nashville, TN

Elise A. Fialkowski, Philadelphia, PA

Nicole A. Kersey, St. Petersburg, FL

Marketa Lindt, AILA Past President, Chicago, IL

Montserrat C. Miller, Atlanta, GA

Mary E. Pivec, Woodbridge, VA