

Before We Get Started

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- Use the Questions pane to send questions to organizers
 - Time to answer questions at the end
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Compliance or Bust: How to Effectively Prepare for Increased Enforcement

Elise A. Fialkowski
Michele G. Madera
Feige M. Grundman

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Elise A. Fialkowski
Partner

Elise Fialkowski has been providing immigration assistance and solutions to leading universities, research institutions, multinational corporations, startups, entrepreneurs and individuals for over 25 years.

Elise has particular expertise in worksite enforcement and leads Klasko's worksite compliance group. She regularly counsels on I-9 compliance, E-Verify, and H-1B LCA compliance. She works with employers to develop proactive compliance programs and assists employers with internal audits and training. Elise has also successfully represented companies facing I-9 and H-1B LCA audits and investigations.

Elise has long been active in the American Immigration Lawyers Association (AILA) and currently serves on AILA's Global Migration Section Steering Committee and on the Philadelphia Customs and Border Protection Liaison Committee. She has served on many other committees at the local and national level.

Elise has been named in Best Lawyers in America ©, Pennsylvania SuperLawyers, The International Who's Who of Corporate Immigration Lawyers and the International Who's Who of Business Lawyers. A Phi Beta Kappa graduate of the University of North Carolina at Chapel Hill, Elise received her law degree from the Villanova University School of Law (J.D., magna cum laude, 1991).



Michele G. Madera's practice is focused on employment-based non-immigrant and immigrant matters for large corporations with a high volume of immigration matters.

Michele has extensive experience advising clients throughout the labor certification process, including the recruitment process, filing the Form ETA 9089, and responding to Audit Requests by the Department of Labor.

She also has worked with clients in the preparation of B-1 Business Visitor applications, the following petitions: H-1B, E-3, H-3, L-1A, I-140s for EB-1, EB-2 and EB-3 classifications, adjustment of status applications, Re-entry Permit applications, and Motions to Reopen.

Michele has also advised her clients and assisted in responses to Requests for Evidence. She works with employers in assessing new job opportunities for employees to determine the effect of the change on non-immigrant and immigrant matters. Michele has represented clients before U.S. Citizenship and Immigration Services, U.S. Department of Labor, and U.S. Customs and Border Protection.



Michele G. Madera
Partner



Feige M. Grundman
Senior Associate

Feige M. Grundman is a Senior Associate in the Firm's Philadelphia office. Feige's practice includes the representation of Fortune 500, multinational, and private companies with high volume employment based non-immigrant and immigrant visa matters.

She has significant experience advising clients on PERM applications and denials, strategies for employing foreign nationals, I-9 compliance, worksite enforcement, and E-Verify compliance. She frequently represents companies before the U.S. Department of State, U.S. Department of Labor, and the U.S. Department of Homeland Security. Feige also prepares filings for individuals seeking to invest in the United States via various visa programs, and counsels those facing 221(g) issues at U.S. Consulates. She also provides pro bono legal counsel to the Adoptee Rights Campaign and assists in lobbying efforts towards obtaining citizenship for all adoptees.

A member of the Pennsylvania, New Jersey and Florida Bars, Feige is an active member of the American Immigration Lawyers Association. She is a past Board member of the Support Center for Child Advocates and served as an Executive Committee Liaison to the Philadelphia Bar Association's Young Lawyers Division.



Current State of Affairs

- Increased enforcement, including I-9
- IER non-discrimination enforcement
- FDNS site visits and DOS verifications
- SSA no match-letters



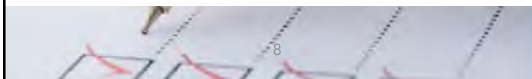
Increased Enforcement

- Executive Order- BAHA April 2017
- April 3, 2017 measures to deter and detect visa fraud and abuse
- New USCIS webpage - combating fraud and visa abuse
- DOJ immigrant and employee rights section (IER)
- DOL web page/statement



Why Should You Care? Fines and Penalties

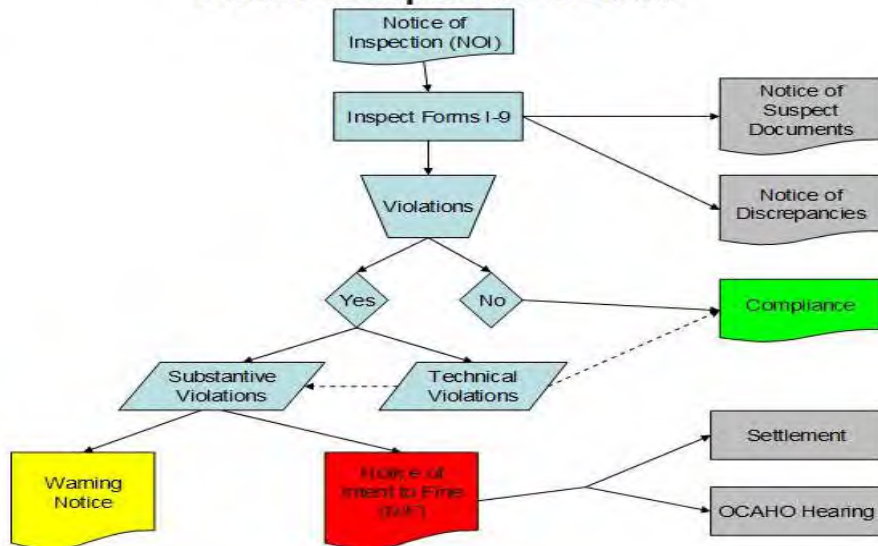
- I-9
- Public exam file
- Technology considerations



Form I-9

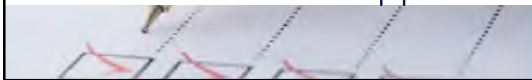
- New fine structure effective Aug. 1, 2016 (96% increase)
- Violation Percentage (at 50% >\$1,800 fine per I-9 - substantive violation)
- Potential for criminal charges for "pattern and practice" of unlawful employment

Form I-9 Inspection Process



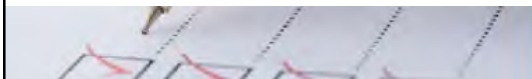
I-9 Audits – The Mechanics

- Notice of Inspection – delivery and timing
- Next Steps
- Self Audit?
- Tips
- Electronic I-9s
- E-Verify
- Impact Policy/Self-audits
- What happens when audit is complete?



Companies Fined or Reached Settlements

- | | |
|-------------------------------|---|
| • Asplundh Tree Experts | • United Natural Foods, Inc. |
| • Infosys | • University of California San Diego Medical Center |
| • United/Continental Airlines | • Martin Farms |
| • Culinaire International | • Tyson Foods |
| • IBM | • Hoover, Inc. |
| • Kelly Services, Inc. | • Catholic Healthcare West |
| • Forever 21 | • Macy's |
| • Macy's Retail | • Morton's Steakhouse |
| • FTD Inc. | • John Jay College of Criminal Justice |
| • Holliswood Hospital | • KMart |



Example – Asplundh Tree Experts

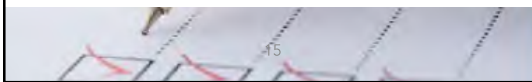
- \$95 million - largest settlement to date
 - \$80 million criminal forfeiture
 - \$15 million civil payment
- Background
- Impact of E-Verify
- Lessons learned

Companies Fined or Reached Settlements

Employer's Name	Penalty Sought by ICE	OCAHO's Decision
SKZ Harvesting		
Golden Farm Market		
Hair U Wear		
Safe-Air of Illinois		
Frimmel Management		
Golden Employment Group		
International Packaging		
Jack's Produce Co.		
Muniz Concrete & Contracting	\$19,989	\$16,275
Cawoods Produce	\$34,465	\$14,575
Roscoe's House of Chicken & Waffles	\$38,708	\$18,350
Para Tacos la Chilanga	\$34,408	\$33,379
Solutions Group Int'l	\$86,394	\$56,150
St. Croix Personnel Services	\$16,690	\$5,450
Ideal Transportation Co.	\$11,220	\$2,700
Pegasus Family Restaurants	\$96,398	\$58,850
Totals:	\$1,261,992	\$871,361

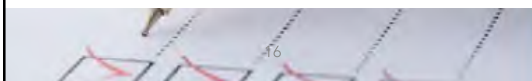
Increased IER (formerly OSC) Enforcement Non-Discrimination in I-9 Process

- Enforces citizenship/immigration status discrimination, national origin discrimination, document abuse and retaliation
- Civil penalties:
 - Citizenship/national origin discrimination \$452 – \$17,816
 - Document abuse – \$178 – \$1,782
 - Back-pay & injunctive relief
- New Focus on protecting US Workers



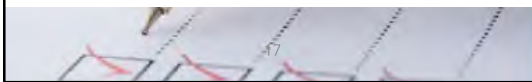
Increased IER Enforcement continued Non-Discrimination in I-9 Process

- Recent notable enforcement
 - CFA Institute \$321,000 (Feb. 25, 2019)(US workers)
 - Honda Aircraft \$44,626 (Feb. 1, 2019)
 - Technical Marine Maintenance \$857,868 (Dec. 2018)
 - Triple H Landscape Services (\$85,000 back pay plus \$15,600 civil penalties) (June 2018)(US workers)
 - Saipan Restaurant (\$40,00 back pay)(US workers)
 - Aldine, TX School Dist. \$140,000 (Dec. 2016)
 - Denver Sheriff Dept. \$10,000 (Nov. 2016)
 - American Cleaning Co. \$195,000 (Oct. 2016)
 - Macy's \$8,750 (June 2016)
 - McDonald's \$355,000 (November 2015)
 - Catholic Healthcare West >\$257,000



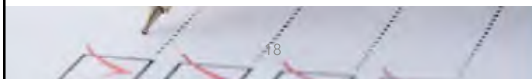
FDNS Site Visits & DOS Verifications

- FDNS
- Most Site Visits will be routine
- Increase in site visits for contractors
- "Failure to Verify" will result in Notice of Intent to Revoke
- Pattern of Failure to Verify may result in criminal charges
- Expansion to include other visa categories beyond H-1B and L-1A
- DOS Verifications have increased!



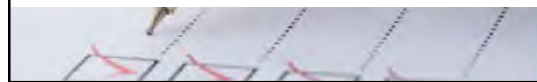
DOL Enforcement

- Typically initiated by complaint
- DOL can assess civil fines, back pay and debarment
- LCA/PAF Examples:
 - April 13, 2016 – Southern Illinois University of Medicine – \$223,884 in back wages for H-1B doctor
 - June 2012 – Georgia IT company pays \$740,000 in back wages
- LCA Enforcement no longer merely civil
- Criminal Charges for false statements & "alien smuggling"
- Jail time, criminal fines and civil forfeiture
- PERM Enforcement



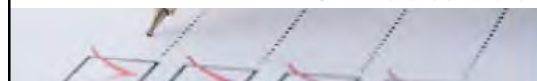
Interagency Cooperation

- DOJ/IER and USCIS MOU to Protect U.S. Workers From Discrimination and Combat Fraud –May 2018
 - “expands their collaboration to better detect and eliminate fraud, abuse, and discrimination by employers bringing foreign visa workers to the United States.”
- Unprecedented Cooperation and Information Sharing
- Memorandum of Agreement- MOA
 - 12/08 USCIS MOA with ICE
 - 3/10 USCIS MOA with Office of Special Counsel (OSC)
 - 3/11 ICE MOA with DOL
- 12/14/15 Joint ICE and OSC guidance on internal I-9 audits



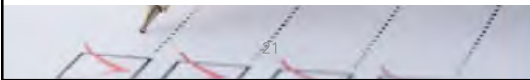
Interagency Cooperation/Intra-agency Data Mining

- Furthered by Continuing Technology Developments
- Examples:
 - E-Verify data triggers OSC Investigation
 - Consular interview triggers CIS Inquiry or DOL investigation
- Indications of future data sharing
 - Possibility of FDNS site visit triggering DOL Investigation
 - Intra-agency data mining
 - RFEs that reference prior petitions



Practical Strategies

- Technology
- Policy
- Pre-audit
- Compliance program



Questions?





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