



2017 AILA Employer Compliance and Worksite Enforcement Conference

February 10–11, 2017

The Westin Kierland Resort & Spa, Scottsdale, AZ

Join us in Scottsdale for strategies and guidance on how to address compliance and enforcement issues facing employers in an uncertain climate.

Employer compliance and enforcement issues are bound to take on even greater prominence in the new presidential administration. Staying informed on the latest information regarding these issues therefore will become more important than ever. To this end, the 2017 AILA Employer Compliance and Worksite Enforcement conference, a comprehensive two-day event led by nationally-recognized experts, is designed to educate attendees on the most pressing compliance and enforcement issues facing employers and attorneys, and provide essential tips and best practices for how to deal with them. Day One will focus on employer compliance in immigration law, while Day Two will address worksite enforcement in both beginner/intermediate– and master’s-level tracks. If you are working with or representing employers, this conference should not be missed!

FRIDAY, FEBRUARY 10, 2017: EMPLOYER COMPLIANCE

Day Coordinator: Edward R. White, Boston, MA

8:00 am – 5:00 pm **REGISTRATION AND EXHIBITS**

8:00 am – 8:40 am **AILALINK TRAINING**

See AILALink in action! Developed and maintained by AILA, AILALink is an online research library of fully searchable resources necessary for the successful practice of immigration law—e.g., statutes, regulations, case law, agency correspondence, AILA publications, immigration forms, and much more. See what AILALink can do for your practice during this special training! In addition, the presenter will give a brief overview of the new AILA.org. Learn how to utilize your number one AILA member benefit!

8:45 am – 8:55 am **OPENING REMARKS**
Sharon R. Mehlman, AILA Verification & Documentation Liaison Committee Chair, San Diego, CA

9:00 am – 10:00 am **REPRESENTING CONTRACTING COMPANIES AND THE EMPLOYERS WHO USE THEM**
Love 'em or hate 'em, contracting and staffing companies employ a large percentage of the H-1B workforce in the United States. With companies increasingly using these services, you may soon be called upon to advise on the unique immigration compliance issues these contracting arrangements present. Our panel of experts will discuss these issues

(DL) = Discussion Leaders
* = Invited Speakers, Not Confirmed

from the perspective of both the contracting company and the end-user, and will identify best practices on how to deal with them.

- Challenges and Strategies When Representing the Contracting Company
- Challenges and Strategies When Representing the End-User
- Joint Employer Concerns
- Best Practices in the Outsourcing Process
- Recommendations to Avoid Litigation and Regulatory Action

Faculty:

Vic Goel (DL), AILA Business Immigration Committee Chair, Reston, VA

Rami D. Fakhoury, Troy, MI

Cyrus D. Mehta, New York, NY

10:05 am – 11:05 am

LCA AND PAF COMPLIANCE AND BEST PRACTICES

Immigration attorneys are responsible for critical aspects of the LCA, including ensuring accuracy and, often, making the call on the prevailing wage. In addition, the public access files (PAFs) of our clients are only as good as the instructions we provide. Moreover, clients will become increasingly reliant on us to get these things right as immigration policies and/or employer circumstances change. Join our panelists for a discussion on what you need to know concerning LCAs, PAFs, compliance, and emerging government concerns to help prepare yourself to provide proper guidance.

- Content, Format, and Retention of Documents: Maintaining “Perfect” PAFs
- PAF Audits and Advising When You Discover Noncompliance
- Keeping Track of Changes (E.g., Wages, Dependency)
- Short Term Placements and Other Exceptions: Advising After *Simeio*
- Surviving a DOL Audit or FDNS Visit
- Role of the Attorney in Choosing Levels and Job Codes for the LCA

Faculty:

Kevin W. Miner (DL), AILA Board of Governors/Department of Labor Liaison Chair, Atlanta, GA

William A. Stock, AILA President, Philadelphia, PA

J. Anthony “Tony” Smith, Los Angeles, CA

11:05 am – 11:25 am

NETWORKING BREAK

11:25 am – 12:25 pm

BEYOND AILA8: A REVIEW OF NOTABLE ALJ AND CIRCUIT COURT DECISIONS

Does the prospect of not being fully up-to-date on recent compliance-related case law keep you up at night? Maybe it should! Join our panelists to find out what you’ve been missing as they review and discuss NIV and IV cases with compliance-related factors at issue. These factors include failure to make good on the promise to start a green card, nonpayment of the prevailing wage, permissibility of the employee paying H-1B costs, and other issues that intersect with your day-to-day immigration practice.

Faculty:

Kevin W. Miner (DL), AILA Board of Governors/Department of Labor Liaison Chair, Atlanta, GA

Mary E. Pivec, Arlington, VA

John Patrick Pratt, Miami, FL

12:25 pm – 1:35 pm

LUNCH (PROVIDED)

1:35 pm – 2:35 pm

DRAFTING CORPORATE IMMIGRATION POLICIES

Immigration policies are important compliance tools for employers, but they’re not one size fits all. Join our panelists as they discuss key considerations in drafting and maintaining immigration policies that not only protect client interests, but also incorporate best practices for factoring in unique needs (e.g., company culture, industry, etc.)

- What to Include and Not Include
- Why Is It a Good Idea for Employers to Have a Corporate Immigration Policy?
- Payback Provisions
- Discrimination Issues and Questions During the Onboarding Process
- Contractor Usage Policies

Faculty:

Wendy Padilla-Madden (DL), Fremont, CA

Vic Goel, AILA Business Immigration Committee Chair, Reston, VA

Jeff Joseph, Aurora, CO

2:40 pm – 3:40pm

COMPLIANCE CONSIDERATIONS IN MERGERS & ACQUISITIONS

Immigration lawyers are often the last lawyers brought into the conversation in a merger, acquisition, or corporate reorganization. We need to be prepared not only to provide accurate advice, but to do so quickly, as the window of time for taking any necessary immigration compliance steps is relatively short. Panelists will provide a basic overview of corporate M&A concepts as they intersect with immigration law, and discuss related legal requirements, compliance best practices, and “hot topics” in order to prepare you to give the best possible advice to corporate lawyers and clients.

- Timing and Types of Deal Structures
- Drafting Wording for the Agreements
- Arguing Successor-in-Interest vs. Filing Amended Petitions
- Immigration Due Diligence (E.g., I-9, LCAs, PERM, NIVs, IVs)
- Post-closing Remediations

Faculty:

Paige L. Taylor (DL), Addison, TX

Robert F. Loughran, Austin, TX

Angelo A. Paparelli, Los Angeles, CA

3:40 pm – 4:00 pm

NETWORKING BREAK

4:00 pm – 5:00 pm

ETHICAL ISSUES IN EMPLOYER COMPLIANCE

The law as it relates to employer compliance is rife with ethical questions and situations where there is no clear-cut guidance to be discerned. This is your chance to hear how others in the immigration field navigate these decidedly murky waters. Join our panelists for an in-depth discussion of the most common areas where ethical quandaries abound.

- Who Is Your Client?
- Aggressive Lawyering: Strategy, Creativity, or Liability?
- Use of B-1/B-1 in Lieu of H-1B
- L-1 Visas: Creating L Programs, the Visa Reform Act, and Other Considerations
- STEM Training Plans
- Cap-Exempt Organizations, Duplicate Filings, “Employed-At”

Faculty:

Cyrus D. Mehta (DL), New York, NY

Mahsa Aliaskari, Los Angeles, CA

J. Anthony “Tony” Smith, Los Angeles, CA

5:00 pm

COMPLIANCE CONFERENCE CONCLUDES

SATURDAY, FEBRUARY 11, 2017: WORKSITE ENFORCEMENT

7:15 am – 5:00 pm **REGISTRATION AND EXHIBITS**

Day Coordinator: *Wendy M. Swanson, Palo Alto, CA*

TRACK 1: BEGINNER/INTERMEDIATE

7:15 am – 7:55 am **SPECIAL EARLY BIRD SESSION—AILALINK TRAINING**

See AILALink in action! Developed and maintained by AILA, AILALink is an online research library of fully searchable resources necessary for the successful practice of immigration law—e.g., statutes, regulations, case law, agency correspondence, AILA publications, immigration forms, and much more. See what AILALink can do for your practice during this special training! In addition, the presenter will give a brief overview of the new AILA.org. Learn how to utilize your number one AILA member benefit!

8:00 am – 9:00 am **THE NEW I-9 FORM (WORKSHOP)**

The new I-9 Form is here ... along with fifteen pages of instructions. Panelists will provide an introduction to the I-9 form process, timing, and general requirements. Panelists also will review the new I-9 form itself, discuss changes from the 2013 version, and review the unresolved issues still awaiting guidance.

Faculty:

Amy Erlbacher-Anderson (DL), Omaha, NE

Allen Orr, AILA Secretary, Washington, DC

Kimberley Best Robidoux, San Diego, CA

9:05 am – 10:05 am **INTRODUCTION TO ICE HSI I-9 AUDITS**

ICE's Homeland Security Investigations Division (HSI) is responsible for conducting I-9 audits. This panel will provide an overview of the steps in an I-9 audit, and discuss how to respond to the different types of notices your client may receive.

- Notice of Inspection
- Notice of Technical/Procedural Failures
- Notice of Suspect Documents
- Notice of Intent to Fine
- The Fine Matrix and Updated Fines

Faculty:

Lori Torgerson Chesser (DL), Des Moines, IA

Patricia Gannon, New York, NY

Mahsa Aliasgari, Los Angeles, CA

**Rachel Ross, Supervisory Special Agent Section Chief, Immigration and Customs Enforcement Homeland Security Investigations, Washington, DC*

10:05 am – 10:20 am **NETWORKING BREAK**

10:20 am – 11:20 am **INTRODUCTION TO E-VERIFY**

The Verification Division in USCIS is responsible for E-Verify, a program that, in addition to the I-9 form, allows employers to verify employment authorization. This "free" system is one that many employers use, but few are in total compliance. Join our panelists for an overview of the E-Verify system, a discussion of requirements for enrollment, and best practices.

- Categories of Employers Who Can Sign-up
- Considerations Before Signing the MOU

(DL) = Discussion Leaders

** = Invited Speakers, Not Confirmed*

- Overview of the System and the Connection to the I-9
- FAR E-Verify
- Challenges, Strategies, and Tricks of the Trade

Faculty:

Jeff Joseph (DL), Aurora, CO

Loan T. Huynh, AILA DOL Liaison Committee Vice Chair, Minneapolis, MN

Robert F. Loughran, Austin, TX

Katherine Lotspeich, Deputy Chief, USCIS Verification Division, DHS, Washington, DC

11:25 am – 12:25 pm

INTRODUCTION TO OSC*

The Office of Special Counsel for immigration-related unfair employment practices (OSC) within DOJ is the entity responsible for reviewing discrimination complaints in the hiring process. Many of those complaints arise due to the I-9 and E-Verify processes. Join our panelists for an overview of OSC and the types of investigations that may arise. (Please note that as of 1/18/17, OSC is now known as the Immigrant and Employee Rights Section (IER)).*

- Overview of OSC
- Four Types of Discrimination
- How Discrimination Can Come Up in the I-9, E-Verify, and Reverification Processes
- Investigations

Faculty:

Maggie M. Murphy (DL), Austin, TX

Marcine Seid, AILA Board of Governors, Palo Alto, CA

Paige L. Taylor, Addison, TX

Jennifer Deines, Acting Special Policy Counsel, Immigrant and Employee Rights Section (IER), Civil Rights Division, U.S. Department of Justice, Washington, DC

12:25 pm – 1:10 pm

LUNCH (PROVIDED)

1:10 pm – 1:40 pm

LUNCH PANEL: OCAHO CASE REVIEW

These panelists have read all the recent OCAHO decisions in order to provide you a refresher. Join them over lunch for a recap of recent OCAHO decisions and a discussion about key take-aways.

Sharon R. Mehlman (DL), AILA Verification & Documentation Liaison Committee Chair, San Diego, CA

Eileen M.G. Scofield, Atlanta, GA

1:40 pm – 2:40 pm

INTRODUCTION TO OCAHO

The Office of the Chief Administrative Hearing Officer (OCAHO) bears various types of cases, including discrimination and challenges to ICE I-9 fines. This panel will provide an overview of OCAHO, including how to file a case.

- Overview of OCAHO and the Types of Cases That Are Reviewed
- How to File a Case with OCAHO
- Steps in an OCAHO Proceeding
- Review of Significant Decisions and Why Understanding OCAHO Is Important

Faculty:

Maggie M. Murphy (DL), Austin, TX

Nicole A. Kersey, Fort Leavenworth, KS

Patrick Shen, Washington, DC

Robin M. Stutman, Chief Administrative Hearing Officer, OCAHO, EOIR, Falls Church, VA

2:45 pm – 3:45 pm

ELECTRONIC I-9 SYSTEMS

*Many employers have switched to electronic I-9 systems to become more efficient in their onboarding process. However, not all systems are equal, nor are all are compliant under current regulations. Panelists will provide an overview of the issues to be considered when reviewing the compliancy of electronic I-9 systems. (*Issues about specific I-9 systems will not be discussed on this panel.)*

- General Requirements for an Electronic I-9 System
- Ensuring Compliance with the Regulations and Guidance
- Common Noncompliance Issues in Electronic Systems
- Penalties for Using Noncompliant Systems
- Saving I-9s Electronically vs. Using an Electronic I-9 System

Faculty:

Sarah Hawk (DL), Atlanta, GA

Lindsay L. Chichester Koren, Orlando, FL

Wendy Padilla-Madden, Fremont, CA

3:45 pm – 4:00 pm

NETWORKING BREAK

4:00 pm – 5:00 pm

ETHICAL CONSIDERATIONS IN WORKSITE CASES

Ethical conundrums lurk around every corner when dealing with worksite enforcement. Whether you are working on an internal audit, dealing with an ICE matter, or just providing general advice, it is essential that you are aware of potential issues that may arise. Join our panelists for a lively discussion about the most common ethical questions facing attorneys handling worksite cases today.

- Who Do You Represent ... and Who Does the Client Think You Represent?
- Actual Knowledge vs. Constructive Knowledge
- Proactive vs. Reactive Legal Advising
- Is My Case Going Criminal?: When to Bring in Other Counsel

Faculty:

Paul W. Virtue (DL), Washington, DC

Sarah Hawk, Atlanta, GA

Julie Myers Wood, CEO, Guidepost Solutions/Former Assistant Secretary of Homeland Security, U.S. Immigration and Customs Enforcement, Washington, DC

Day Coordinator:

Greg Berk, Costa Mesa, CA

TRACK 2: MASTER'S

8:00 am – 9:00 am

ADVANCED OSC*

*When the U.S. Office of Special Counsel (OSC) decides to focus its resources on inspecting your client, no stone is left unturned. The agency has, in fact, taken an "activist" approach to investigations, and has proposed revised regulations that would significantly change the landscape of OSC-related discrimination cases. It is therefore more important than ever to know what to expect and how to respond to OSC investigations and litigation. The experts on this advanced-level panel will discuss how best to prepare your clients for potential OSC investigations, and how they can reconcile OSC's ever-growing volume of guidance with real world employment practices. (*Please note that as of 1/18/17, OSC is now known as the Immigrant and Employee Rights Section (IER)).*

- Overview and Best Practices for OSC Investigations and Litigation
- Challenges in the Onboarding Process: What Can Employers Ask Candidates?
- New OSC Regulations and What They Mean for Employers

(DL) = Discussion Leaders

** = Invited Speakers, Not Confirmed*

- When States Get Involved in Worksite: State vs. Federal Considerations

Faculty:

Sharon R. Mehlman (DL), AILA Verification & Documentation Liaison Committee Chair, San Diego, CA

Amy L. Peck, AILA Board of Governors, Omaha, NE

Eileen M.G. Scofield, Atlanta, GA

9:05 am – 10:05 am

WORKSITE AND MERGERS & ACQUISITIONS

When a client mentions a corporate change, the first thing an immigration attorney often thinks of is, “What about the I-9s?” In this advanced-level session, panelists will delve deep into the details on what you need to know concerning mergers, acquisitions, and corporate reorganizations, and how these actions affect the I-9 and E-Verify programs.

- To Adopt or to Re-I-9? That Is the Question!
- Best Practices in I-9 Due Diligence
- Issues of Knowledge, Before and After Close
- Successor Concerns for ICE Audits
- E-Verify Issues When There Is a Corporate Change

Faculty:

Kimberley Best Robidoux (DL), San Diego, CA

Marketa Lindt, AILA 2nd Vice President, Chicago, IL

Kathleen Campbell Walker, AILA Past President/USCIS Field Operations Liaison Committee Co-chair,
El Paso, TX

10:05 am – 10:20 am

NETWORKING BREAK

10:20 am – 11:20 am

ADVANCED ISSUES CONCERNING ICE HSI

An audits starts with a Notice of Inspection, but your legal counsel can have a significant impact on where it goes from there. How you advise your client before an audit, in training, and a self-audit, then later in the audit response, can be the difference between a mere warning letter and significant fines and penalties. Join our panelists for an advanced-level discussion about hot topics, best practices, and advising on issues where the “right” answer may be a moving target.

- Effective Strategies When Negotiating a Notice of Intent to Fine
- Remediation Challenges: Can I Just Re-I-9 the Whole Workforce?
- How to Advise Clients When There Are Different Interpretations
- Using OCAHO and Court Decisions to Your Advantage
- Remote Hires

Faculty:

Marcine Seid (DL), AILA Board of Governors, Palo Alto, CA

Allen Orr, AILA Secretary, Washington, DC

Julie Myers Wood, CEO, Guidepost Solutions/Former Assistant Secretary of Homeland Security, U.S.
Immigration and Customs Enforcement, Washington, DC

11:25 am – 12:25 pm

ADVANCED ISSUES WITH E-VERIFY

You have read the user manuals, bookmarked the E-Verify website, and understood your client’s commitments in the Memorandum of Understanding ... but what about the surprising number of common scenarios that aren’t covered in these documents? Are you advising your clients about all of the issues that may arise? Are you ensuring that they are fully in compliance? Has your client done something that requires remedial action? Join our panelists for an advanced-level discussion on some of the most common and perplexing E-Verify issues.

- Monitoring and Compliance Desk Reviews and the “Matrix”
- Common Employer Challenges Within E-Verify and How to Handle Them
- Worksites and Hiring Sites: Employing STEM Students and Remote Hires

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* = Invited Speakers, Not Confirmed

- FAR Clauses
- When State Laws Conflict

Faculty:

John C. Fay Jr. (DL), Phoenix, AZ

Amy L. Peck, AILA Board of Governors, Omaha, NE

Eileen M. Momblanco, Chicago, IL

12:25 pm – 1:10 pm

LUNCH (PROVIDED)

1:10 pm – 1:40 pm

LUNCH PANEL: OCAHO CASE REVIEW

These panelists have read all the recent OCAHO decisions in order to provide you a refresher. Join them over lunch for a recap of recent OCAHO decisions and a discussion about key take-aways.

Sharon R. Mehlman (DL), AILA Verification & Documentation Liaison Committee Chair, San Diego, CA

Eileen M.G. Scofield, Atlanta, GA

1:40 pm – 2:40 pm

WORKSITE “OUTSIDE THE BOX”

As immigration lawyers, we can leave issues such as unions, franchises, etc. in the capable hands of our employment or corporate law colleagues, right? Not always! Join our panelists for an advanced-level discussion of the special worksite issues that may arise outside the usual boundaries of day-to-day immigration practice, issues that can affect the advice we provide in these types of cases.

- Overview of Worksite Issues That Arise with Franchises
- Discussion of Worksite Issues in a Unionized Workplace
- Joint Employment and Use of Professional Employer Organizations in the Worksite Context
- Working with the Publicly Traded Employer
- Contractors and End Users: the “Walmart” Scenario

Faculty:

Lindsay L. Chichester Koren (DL), Orlando, FL

Kevin Robert Lashus, Austin, TX

Mary E. Pivec, Arlington, VA

2:45 pm – 3:45 pm

THE ETHICS AND OBLIGATIONS OF HAVING “KNOWLEDGE”

“Knowledge is power,” the saying goes, but when is it also a problem? Are you providing your clients with the correct advice in situations where there may be actual or constructive knowledge of lack of employment authorization? When there is an issue, there is always close scrutiny of what the employer knew, when they knew it, how they learned of it, and what they did with the information. Come join our panelists for an advanced-level discussion on some of the ethical challenges facing employers and attorneys.

- The Various Types and Interpretations of “Knowledge”
- Affordable Care Act Concerns
- Information from Third Parties, Government Agencies, and Tips
- Differences of Opinion within the Agencies
- When Is Attorney “Knowledge” Imputed to the Employer?
- When to Withdraw and from Whom?

Faculty:

Angelo A. Paparelli (DL), Los Angeles, CA

Marketa Lindt, AILA 2nd Vice President, Chicago, IL

Lori Torgerson Chesser, Des Moines, IA

3:45 pm – 4:00 pm

NETWORKING BREAK

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4:00 pm – 5:00 pm

ADVANCED ELECTRONIC I-9 SYSTEMS

*The last thing that anyone wants as the result of an ICE inspection is a 100 percent deficiency rate for I-9s resulting from the employer's electronic I-9 system. Beyond the regulations, there are critical issues that you should know in order to properly counsel clients on electronic I-9 systems. Join our panelists for a discussion of the advanced-level issues facing employers and attorneys in the use of electronic systems. (*Issues with specific I-9 systems will not be discussed on this panel.)*

- Proactive Advising: Reviewing an I-9 system for Compliance
- Reactive Advising: When an Employer's System Is Not Compliant
- Electronic Signatures
- Onboarding Systems vs. I-9 Systems
- Use of Agents in the Process

Faculty:

Kevin Robert Lashus (DL), Austin, TX

Nicole A. Kersey, Fort Leavenworth, KS

5:00 pm

CONFERENCE CONCLUDES

CONFERENCE PROGRAM COMMITTEE

Sharon R. Mehlman, AILA Verification & Documentation Liaison Committee Chair, San Diego, CA

Michelle Funk, McLean, VA

Richard A. Gump Jr., Dallas, TX

Nicole A. Kersey, Fort Leavenworth, KS

Cyrus D. Mehta, New York, NY

Katie Nokes Minervino, Portland, ME

Peter T. Schiron Jr., Stamford, CT

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