



2019 AILA FALL CONFERENCE

WORKSITE COMPLIANCE AND ENFORCEMENT: PRACTICAL, ETHICAL, AND BUSINESS CONSIDERATIONS IN AN ERA OF UNCERTAINTY

This track surveys the legal landscape employers must navigate in the current climate of heightened immigration enforcement. Our expert faculty will provide practical tools to aid employers and their representatives as they work to ensure compliance, and they will identify, and advise on best practices for resolving, ethical and business issues that arise for attorneys representing employers large and small. Each panel will begin with an overview of the basics of the topic to be covered, proceed with an in-depth analysis of common intermediate level issues, then conclude by highlighting selected advanced problems practitioners may face.

SEPTEMBER 13, 2019
THE ST. REGIS DEER VALLEY
PARK CITY, UT

Friday, September 13, 2019

Day Coordinator: *TBD*

7:30 am–5:00 pm **REGISTRATION, INFORMATION, AND EXHIBITS**

TRACK: WORKSITE COMPLIANCE AND ENFORCEMENT

8:05 am–8:10 am **WELCOME AND GREETINGS**
Nicole Kersey, Conference Program Chair, St. Petersburg, FL

8:10 am–9:40 am **I-9 AND E-VERIFY COMPLIANCE**
With the government's increase in enforcement actions, every employer needs to be more vigilant about its immigration-related compliance efforts. Form I-9 and E-Verify compliance take on a special significance in light of the potential civil and criminal penalties. Our panelists will guide you through the basics of paper and electronic I-9 compliance, and address common pitfalls associated with the electronic I-9.

- Back to Basics: Paper I-9 Compliance Considerations
- Paper vs. Electronic I-9s
- Electronic Software: Legal Reviews for Compliance

- Software Updates
- E-Verify
- Vendor Contracts and Switching Vendors
- Remote Hires
- Conflicts of Interest

Faculty:

Poonam Gupta (DL), New York, NY

John Fay, Phoenix, AZ

Kevin Robert Lashus, Austin, TX

Dawn M. Lurie, Washington, DC,

9:45 am–10:45 am

WHAT AUDIT? (INTERNAL COMPLIANCE REVIEWS)

With the resurgence of SSN “no-match” letters and ICE’s increase in worksite enforcement, more employers are seeking experienced attorneys to guide them through audits of their internal documents and other compliance processes. Join our panelists as they discuss I-9 and other compliance audits, the ethical and legal concerns involved in such audits, strategies for addressing those concerns, and due diligence best practices in M&A auditing.

- What Prompts an Internal Audit?
- What to Audit, Who Should Do It, and What Is the Scope?
- M&A Due Diligence
- How Violations and/or Incompetent Counsel Create Legal Issues
- Ethical Issues in Advising Clients Who May Not Be Following the Law

Faculty:

Eileen M.G. Scofield (DL), Atlanta, GA

Marketa Lindt, AILA President-Elect, Chicago, IL

Helen L. Konrad, Richmond, VA

Roger Tsai, Denver, CO

10:45 am–11:00 am

NETWORKING BREAK

11:00 am–12:30 pm

ICE HAS LEFT THE BUILDING ... WHAT NOW?

Panelists will advise on best practices for representing employers after they have received a notification from the government—i.e., Notices of Inspection (NOI) or Intent to Fine (NOIF); SSN no-match letter; DOL request for information, subpoena, or warrant—involving worksite audits, investigations, and the aftermath. They also will review recent caselaw and address ethical considerations.

- NOIs and Administrative Subpoenas: Timing, Format for Response, Communication
- NOIF: Conducting Negotiations, What to Do When They Fail
- Repeat Investigations
- State E-Verify Investigations
- Reminders When Other Agencies Are Involved (DOL Wage & Hour Division (W&H), IRS, etc.)
- Proactive Policies and Protocols Every Employer Should Institute

Faculty:

Maggie M. Murphy (DL), Austin, TX

Allen Orr, AILA 1st Vice President, Washington, DC

Josie Gonzalez, Los Angeles, CA

12:30 pm–1:40 pm

LUNCH (INCLUDED WITH REGISTRATION)

12:50 pm–1:40 pm

**WHAT HAPPENS IN LIAISON DOESN'T HAVE TO STAY IN LIAISON
(LUNCH PANEL: GOVERNMENT OPEN FORUM—W&H, SSA, ICE, DOJ'S IMMIGRANT
AND EMPLOYEE RIGHTS SECTION (IER))**

Government representatives will discuss relevant topics, including SSN no-match letters, ICE enforcement activities, and anti-discrimination cases.

Nicole Kersey (DL), AILA 2019-2020 National Verification Liaison Committee Vice Chair, Alberto Ruisanchez, Acting Deputy Special Counsel, U.S. Department of Justice, Immigrant and Employee Rights Section (IER), Civil Rights Division, Washington, DC

Scott McCormack, Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI), Department of Homeland Security (DHS), Washington, DC

**SSA Rep*

**W&H Rep*

1:45 pm–2:45 pm

IER INVESTIGATIONS IN THE ERA OF BUY AMERICAN & HIRE AMERICAN (BAHA)

In the current political environment, BAHA has become a centerpiece of immigration matters. DOJ's Immigrant and Employee Rights Section, which thoroughly investigates companies when issues arise under its jurisdiction, is not immune to this. Given the increased focus on discrimination against U.S. workers, IER investigations and litigation have recently raised issues not "normally" investigated in years past, making it more important than ever to know what to expect and how to respond when these issues are flagged. The experts on this panel will advise on best practices for preparing clients for IER investigations, and discuss potential penalties these clients may face following such investigations.

- Best Practices for IER Investigations and Litigation
- The "Link" Between E-Verify and IER Investigations
- Challenges in the Onboarding Process: What Can Employers Ask Candidates?
- BAHA and the Focus on Discrimination Against U.S. Workers
- The Ever-Changing and Challenging Issues Concerning TPS/DACA and International Traffic in Arms Regulations (ITAR)

Faculty:

Kimberley Best Robidoux (DL), San Diego, CA

Bruce E. Buchanan, Nashville, TN

Jeff Joseph, Aurora, CO

Sharon R. Mehlman, San Diego, CA

2:50 pm–3:50 pm

HANDLING CONSTRUCTIVE KNOWLEDGE SITUATIONS

The government has decided to resume issuing SSN no-match letters to employers while also dramatically increasing civil and criminal worksite investigations. This makes it more critical than ever for employers to implement procedures to resolve social security mismatches and other situations that have the potential to raise concerns that an employer may have constructive knowledge of one or more of its employees being unauthorized. Panelists will discuss ethical issues and best practices for dealing with constructive knowledge and the various situations where such knowledge may be triggered.

- The Return of SSN No-Match Letters: Must the Employer Click on the Link?
- Other Potential Constructive Knowledge Situations—e.g., ACA Discrepancies, Notices from Benefits Providers and State Agencies, and Third-Party "Tips"
- Advising Employers on How to Navigate Questions About Knowledge Regarding Employees
- What Can Employers Do to Reduce Risk?

Faculty:

Daniel Brown (DL), Washington, DC

Kathleen Campbell Walker, AILA Past President, El Paso, TX

Shannon Napier Barnes, Tesla, Inc., Fremont, CA
Marcine Seid, Palo Alto, CA

3:50 pm–4:00 pm

NETWORKING BREAK

4:00 pm–5:00 pm

RECENT TRENDS IN CRIMINAL ENFORCEMENT

Due to the significant increase in criminal worksite investigations in tandem with the dramatic rise in civil I-9 inspections, immigration attorneys need to understand the potential risks employers face and know when to involve criminal counsel. Panelists will discuss recent enforcement trends and expanding liability risks for employers. They also will examine the increase in criminal investigations of employers' use of various visa programs and the heightened focus on criminal and civil forfeiture as an enforcement tool.

- Recent Enforcement Trends and Expanding Theories of Liability
- Criminal Visa Fraud Investigations
- The Perils of Forfeiture in Criminal Immigration Investigations—e.g., \$95 Million Fine of Asplundh Tree Experts
- Working with White Collar Counsel

Faculty:

William A. Stock (DL), AILA Past President/Investment Committee Chair, Philadelphia, PA

Carl W. Hampe, Washington, DC

Kenneth Edward Raleigh, Washington, DC

Richard Roper (former US Attorney Northern District of Texas), Dallas, TX

5:00 pm

CONFERENCE CONCLUDES

Conference Program Committee

Employer Compliance Track Chair

Nicole Kersey, Conference Program Chair, St. Petersburg, FL

Maggie M. Murphy, Austin, TX

Poonam Gupta, New York, NY

Daniel Brown, Washington, DC

Jerome G. Grzeca, Milwaukee, WI

Kimberley Best Robidoux, San Diego, CA

Allen Orr, AILA 2nd Vice President, Washington, DC

Grace Woods, AILA Senior Director of Education, Washington, DC