



## 2018 AILA EMPLOYER COMPLIANCE and WORKSITE ENFORCEMENT CONFERENCE

*Employer compliance and enforcement issues are continuing to take on greater prominence in the current presidential administration. Therefore, staying informed on the latest information regarding these issues is more important than ever. To this end, the 2018 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. The first day of sessions will focus on employer compliance in immigration law, while the second day will address worksite enforcement in both beginner/intermediate- and master-level tracks. If you are working with or representing employers, then this conference should not be missed!*

**August 10–11, 2018  
Sheraton Boston Hotel  
Boston, MA**

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### **FRIDAY, AUGUST 10, 2018: EMPLOYER COMPLIANCE**

*Day Coordinator:* \*Edward R. White, Boston, MA

7:45 am – 5:00 pm **REGISTRATION AND EXHIBITS**

8:25 am – 8:30 am **OPENING REMARKS**

*\*Sharon R. Mehlman, AILA Conference Program Chair/Verification & Documentation Liaison Committee Chair, San Diego, CA*

8:30 am – 9:30 am **IMMIGRATION PRACTICE UNDER THE “BUY AMERICAN AND HIRE AMERICAN” EXECUTIVE ORDER**

*In April 2017, President Trump issued the “Buy American and Hire American” (BAHA) Executive Order calling for agencies to “propose new rules and issue new guidance, to supersede or revise previous rules and guidance . . . to protect the interests of United States workers in the administration of the immigration system, including through the prevention of fraud or abuse” and to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.” At the same time, agencies including USCIS, DOL, and DOJ’s Immigrant and Employee Rights Section (IER) issued press releases and updated webpages focused on combating fraud and abuse and protecting the rights of U.S. workers. Panelists will provide an overview of changes under BAHA, and offer practical guidance on dealing with BAHA’s impact on the preparation of immigration cases.*

- Elimination of Deference to Prior Adjudications, Increased RFEs,
- H-1Bs: Increased Scrutiny, Focus on Wage-Level, Third-Party Placement

- DOS: “Extreme Vetting,” FAM Amendments, Form DS-5535, “90-Day” Rule, and Administrative Processing
- FDNS: Increased Site-Visits, H-1Bs, L-1As, L-1Bs, and more
- Impact on the Green Card Process, including Interviews for All Adjustment of Status Applications
- Increased Collaboration and Information Sharing Among Agencies

*Faculty:*

*\*Elise A. Fialkowski (DL), Philadelphia, PA*

*\*Anastasia Tonello, AILA President-Elect, New York, NY*

*\*Cyrus D. Mehta, New York, NY*

9:35 am – 10:35 am

**COMPLIANCE CHALLENGES FOR A MODERN WORKFORCE**

*With immigration guidance changing so frequently, it is difficult for even the most organized and savvy clients to remain on top of compliance matters; add to that the modern changes in the workforce, and it can feel almost impossible. Panelists will address a variety of challenges that employers face today in balancing what USCIS wants versus what a successful business requires to remain relevant, profitable, and marketable.*

- Use of Contractors, Subcontractors, and Independent Contractors
- Third-Party Placements and the Latest USCIS Guidance
- The Proliferation of Professional Employer Organizations (PEOs) and Burden Shifting
- Remote Employees
- Red Flags: Situations Where Joint Employment Concerns May Arise

*Faculty:*

*William L. Coffman (DL), Boston, MA*

*\*Gayle Oshrin, AILA Board of Governors, New York, NY*

*\*Robert H. Cohen, AILA USCIS HQ (Benefits Policy) Liaison Committee Chair, Columbus, OH*

*\*Sheela Murthy, Owings Mills, MD*

10:35 am – 10:50 am

**NETWORKING BREAK**

10:50am – 11:50 pm

**ETHICAL CONSIDERATIONS IN EMPLOYER COMPLIANCE**

*Advising clients in employer compliance raises numerous ethical questions. These ethics issues may arise where practitioners are tasked with finding creative solutions to complex problems, or when advising clients who may not be following the law. Join our panelists for an in-depth discussion on ethical issues related to employer compliance, best practices for dealing with them, and how to avoid liability for clients.*

- Creativity vs. Liability: Advising Clients on Creative Solutions to Complex Issues
- How Immigration Violations and/or Lack of Counsel Competence Can Lead to Criminal Charges
- Crossing the Line: Jurisdiction of the Immigration Agencies
- Dealing with Employer “Civil Disobedience” in the Current Political Environment

*Faculty:*

*\*Daniel C. Horne (DL), San Francisco, CA*

*\*Alan B. Goldfarb, AILA Ethics Committee Chair, Minneapolis, MN*

*\*Vic Goel, Reston, VA*

11:50 am – 12:40 pm

**LUNCH (PROVIDED)**

12:40 pm– 1:40 pm

**CORPORATE IMMIGRATION POLICIES**

*A written compliance policy can be an important guide to a company's human resources department and in-house counsel, and a significant protection from potential liability. 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 and prepare the client to deal with ever-changing immigration realities.*

- Deciding the Scope of the Policy: What to Include and Not to Include
- When to Sponsor for Immigration Benefits, What to Pay for and How
- Claw back (Payback) Provisions, Liquidated Damages, and Terminating Petitions
- Conflicts Issues, Use of Outside Counsel
- Managing Site Visits, Informants, Complaints, Social Security Mismatches
- Use of Contractors and Managing Them

*Faculty:*

*\*Sharon R. Mehlman (DL), AILA Conference Program Chair/Verification & Documentation Liaison Committee Chair, San Diego, CA*

*\*Josiah J. Curtis, AILA NMD Steering Committee Vice Chair, Boston, MA*

*\*Lynn Susser, Memphis, TN*

1:45 pm – 2:45pm

### **THE INTERSECTION OF EMPLOYMENT AND IMMIGRATION LAW**

*Anytime an employer engages with an employee or potential employee as to an immigration benefit or status, an employment law component comes into play. From the hiring process, to maintenance of the nonimmigrant population, to termination, employment law issues exist that the immigration practitioner should be aware of and understand. Learn how to identify and analyze the employment law issues you will need to manage when counseling your client.*

- Hiring: Screening Applicants—the “Two Questions” and their Progeny
- Identifying Populations by Country of Origin, Nationality, and Visa Status: Export Control Issues, Global Travel Policies, Dealing with Security Issues and Executive Orders
- Termination: Special Considerations for Nonimmigrants
- Nationwide and State-Specific Honesty Policies and Status Violations
- IER, U.S. Equal Employment Opportunity Commission (EEOC), and the Courts on “Nationality,” “Country of Origin” and “Immigration Status”

*Faculty:*

*\*David Grunblatt (DL), Newark, NJ*

*\*Avram E. Morell, AILA Verification & Documentation Liaison Committee, New York, NY*

*\*Mary E. Pivec, Woodbridge, VA*

2:45 pm – 2:55 pm

### **NETWORKING BREAK**

2:55 pm – 3:55 pm

### **PRIVACY PROTECTIONS FOR EMPLOYERS AND EMPLOYEES**

*In the current political environment, employers need to do more than the minimum when it comes to protecting data. State laws, federal laws, and national security concerns have added many layers of employer requirements to protect information. This affects how employers do business, communicate within and outside the company, handle employee travel protocols, and deal with mistakes. Panelists will address the most pressing issues facing employers today, and identify best practices on how to protect both employers and employees.*

- Protecting Personal Identifiable Information (PII)
- Cross-Border Employee Transfer and Privacy
- Global Data Privacy Compliance Program Considerations (GDPR)
- CBP Data Searches for Attorneys and Employees
- E-Applications and Onboarding Privacy

*Faculty:*

*\*Montserrat C. Miller (DL), Washington, DC*

*\*Richard Blake Chisam, Washington, DC*

*\*Lindsay L. Chichester Koren, Orlando, FL*

4:00 pm – 5:00 pm

**U.S. DEPARTMENT OF LABOR COMPLIANCE: MORE THAN JUST LCAS**

*DOL is involved in several aspects of employment-based immigration. Many of us only think about DOL in the LCA context, but much more should be considered. To be compliant, an employer needs to understand not just DOL's requirements, but also how USCIS interprets them, since USCIS has taken a more active role in matters that are legally under DOL jurisdiction. In addition, audits and investigations are on the rise, as well as litigation against employers. Join our experts as they address a variety of compliance challenges and issues.*

- Wage Leveling and Other DOL-Related Concerns by USCIS
- Public Access Files and LCA Challenges
- DOL Audits and Investigations, Including H-2s
- PERM Compliance
- DOL ALJ Decisions: Cases You Need to Watch

*Faculty:*

*\*Kevin W. Miner (DL), AILA Board of Governors, Atlanta, GA*

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

*\*Vincent W. Lau, AILA DOL Liaison Committee Vice Chair, Cambridge, MA*

5:00 pm

**COMPLIANCE CONFERENCE CONCLUDES**

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**SATURDAY, AUGUST 11, 2018: WORKSITE ENFORCEMENT**

7:15 am – 5:00 pm

**REGISTRATION AND EXHIBITS**

*Day Coordinator:*

*\*Matthew J. Maiona, Boston, MA*

**TRACK 1: BEGINNER/INTERMEDIATE**

8:00 am – 9:00 am

**USCIS I-9 WORKSHOP**

*USCIS updated Form I-9 on July 17, 2017. Panelists will introduce the I-9 Form process, and address timing and general requirements. They also will review the I-9 Form itself, identify “smart” features of the online form, discuss recent changes from the prior version, and advise on recent guidance and resources for I-9 completion.*

*Faculty:*

*\*Scott F. Cooper (DL), Madison, WI*

*\*Elise A. Fialkowski, Philadelphia, PA*

*\*Eileen M. Momblanco, Chicago, IL*

9:05 am – 10:05 am

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

*Under federal law, employers are required to verify the identity and employment eligibility of all individuals they hire, and to document that information using the Employment Eligibility Verification Form I-9. ICE's Homeland Security Investigations (HSI) component uses a three-pronged approach to conduct worksite enforcement: **compliance**, through I-9 inspections and civil fines and referrals for debarment; **enforcement**, through the arrest of employers for knowingly employing undocumented workers, and the arrest of unauthorized workers for violating laws associated with working without authorization; and **outreach**, to instill a culture of compliance and accountability through the ICE Mutual Agreement between Government and Employers (IMAGE) program.*

- Overview of an I-9 Audit

- Players: Forensic Auditors, Special Agents, Group Supervisors, ASAC, and SAC
- Local and National Priorities, with the Worksite Emphasis on Compliance

*Faculty:*

*\*Kimberley Best Robidoux (DL), San Diego, CA*

*\*Jeff Joseph, Aurora, CO*

*\*Kevin R. Lashus, Austin, TX*

*\*Carmin DeRose, ICE HSI Chief, Worksite Enforcement Unit, Washington, DC*

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

10:20 am – 11:20 am **IMMIGRANT AND EMPLOYEE RIGHTS (IER)**

*Formerly known as the Office of Special Counsel (OSC), IER is the agency responsible for reviewing discrimination complaints in the hiring process. Many of these complaints arise due to the I-9 and E-Verify processes. Join our panelists for an overview of IER, their jurisdiction, recent guidance for employers, and the types of investigations that may arise.*

- Overview of IER and Its Jurisdiction
- How Discrimination Can Come Up in the I-9, E-Verify, and Reverification Processes
- Overview of Key Technical Assistance Letters and How to Use Them to Advise Clients
- Discussion of Recent Investigations and Penalties Issued

*Faculty:*

*\*Katie Nokes Minervino (DL), AILA Verification & Documentation Liaison Committee Vice Chair, Portland, ME*

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

*\*Jody Danis, Acting Deputy Special Counsel, Immigrant and Employee Rights Section, U.S. Department of Justice, Washington, DC*

11:25 am – 12:25 pm **I-9 AND E-VERIFY COMPLIANCE POLICIES**

*Separate and apart from “regular” immigration policies, I-9 and E-Verify policies cover critical topics relating to all U.S. employees. Panelists will discuss key considerations in drafting and implementing I-9 and E-Verify policies that are clear, protect employer interests, incorporate best practices, and are customized to fit the employer’s practices and industry.*

- Maintaining Document Copies, Rehire Questions, and Training Requirements
- Use of E-Verify (Not at All, Nationwide, or on a Hiring Site Basis)
- Honesty Policies
- Timing Requirements and Policy Options
- Remote Hires

*Faculty:*

*\*Sharon R. Mehlman, AILA Conference Program Chair/Verification & Documentation Liaison Committee Chair, San Diego, CA*

*\*Allen Orr, AILA Treasurer, Washington, DC*

*\*Marcine Seid, Palo Alto, CA*

12:25 pm – 1:10 pm **LUNCH (PROVIDED)**

1:10 pm – 1:40 pm **LUNCH KEYNOTE CONVERSATION:**

*\*Paul W. Virtue, Washington, DC*

1:40 pm – 2:40 pm **NAVIGATING E-VERIFY**

*The USCIS Verification Division is responsible for E-Verify, a program that supplements the I-9 form, and allows, and sometimes requires, employers to verify employment authorization through government databases. E-Verify can be a good thing, but compliance presents true challenges.*

*Panelists will provide guidance on how attorneys can effectively and efficiently guide clients through the E-Verify system.*

- Setting Up E-Verify and the Memorandum of Understanding (MOU)
- The Geography of E-Verify: Worksites, Hiring Sites, Corporate Locations, State Rules, Remote Hires
- Challenges in Using E-Verify: Synching with I-9 Processing, Tentative Nonconfirmations (TNCs) and Final Determinations, Desk Audits, Data Mining, Playing Defense
- Federal Contractors: Scope of the Rule and Obligations, Limits and Strategies
- Agents and Vendors
- “To E-Verify or Not to E-Verify, That Is the Question”

*Faculty:*

*\*Maggie M. Murphy (DL), AILA Texas Chapter Chair, Austin, TX*

*\*Marketa Lindt, AILA 1st Vice President, Chicago, IL*

*\*Bruce E. Buchanan, Nashville, TN*

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

2:45 pm – 3:45 pm

### **ETHICAL CONSIDERATIONS IN WORKSITE ENFORCEMENT PRACTICE**

*Ethical considerations lurk around every corner when dealing with worksite enforcement. Whether you are working on an internal audit, dealing with an ICE investigation, or just providing general advice, it is essential that you are aware of the 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 Is the Client, Dealing with Potential Conflicts
- Knowledge: Actual, Constructive, and Imputed
- Working with Uncooperative ICE Agents
- Challenges of Self-Audits
- Gray Areas: Advising When There Isn't a Clear Answer

*Faculty:*

*\*Lori T. Chesser, Des Moines, IA*

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

*\*Richard A. Gump Jr., Dallas, TX*

3:45 pm – 4:00 pm

### **NETWORKING BREAK**

4:00 pm – 5:00 pm

### **INTRODUCTION TO ELECTRONIC I-9 SYSTEMS**

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

- What Is ICE Requesting During I-9 Investigations?
- What Do the Regulations Require for System Compliance?
- Common Electronic System Concerns
- Onboarding Systems vs. Stand-Alone I-9 Systems
- The Pros and Cons of Going Electronic

*Faculty:*

*\*Nicole A. Kersey (DL), St. Petersburg, FL*

*\*Kimberley Best Robidoux, San Diego, CA*

*\*Dawn M. Lurie, Washington, DC*

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Day Coordinator: \*Meredith Ritchie, Chicago, IL

**TRACK 2: MASTER'S**

8:00 am – 9:00 am

**TRUTH OR CONSEQUENCES: DEBARMENT AND FINES**

*The Trump administration has focused on increased enforcement, pledging a four- to five-fold increase in I-9 audits, all with a focus of protecting U.S. workers. The government now publicizes enforcement operations with large fines, penalties, debarment, and asset forfeiture. Panelists will review the latest developments in this area, provide an advanced-level discussion regarding best practices, and identify strategies to mitigate fines and penalties. Panelists also will discuss the issue of debarment in the worksite context, something the government has been using more frequently and which can have devastating effects on employers.*

- The Latest I-9 Fine Matrix: How to Determine Potential Penalties
- Debarment from Federal Contracts, System for Award Management (SAM)
- The Dangers of Remaining “Willfully Blind”

Faculty:

\*Richard A. Gump Jr. (DL), Dallas, TX

\*Jeff Joseph, Aurora, CO

\*Mary E. Pivec, Woodbridge, VA

9:05 am – 10:05 am

**IER INVESTIGATIONS**

*When IER decides to focus its resources on investigating your client, no stone is left unturned. With the changing political environment and the implementation of the BAHA Executive Order, it is more important than ever to know what to expect and how to respond to IER investigations and litigation. The experts on this panel will discuss how to best prepare your clients for potential IER investigations and the potential penalties that they may face. In addition, they also will discuss the steps required when the case goes to litigation.*

- Monitoring and Compliance Within E-Verify, the Link to IER
- IER Fines and Penalties
- Discovery, Pleading, and Jurisdiction
- What to Expect of the Possibility of Litigation

Faculty:

\*Marketa Lindt (DL), AILA 1st Vice President, Chicago, IL

\*Dawn M. Lurie, Washington, DC

\*Eileen M.G. Scofield, Atlanta, GA

10:05 am – 10:20 am

**NETWORKING BREAK**

10:20 am – 11:20 am

**ICE AUDIT CHALLENGES**

*All ICE audits start with a Notice of Inspection, but in the current political environment, very few audits are straightforward. Are there potential criminal issues, conflicts between state and federal laws or guidance, or issues with representation that add layers of potential liability? Can the actions of the employer or even legal counsel affect the outcome of an audit? Please join our expert panelists as they debate the variety of challenges and hot topics that attorneys face today in handling I-9 audits.*

- Navigating Conflicting State Laws vs. Federal Laws on Worksite Enforcement
- When Civil Cases Go Criminal: When to Bring in Criminal Counsel
- Ethical Issues that Arise in Internal Audits
- Knowledge: Actual, Constructive, and Imputed
- Representation Issues and Joint DAs

*Faculty:*

\*Kevin R. Lashus (DL), Austin, TX

\*Eileen M. Momblanco, Chicago, IL

\*Paul V. Kelly, Boston, MA (Criminal defense attorney)

11:25 am – 12:25 pm **VEXING E-VERIFY ISSUES FOR EXPERTS**

*The E-Verify Memorandum of Understanding, user manual, and website cover basic obligations and scenarios, but they also present several common (and not-so-common) issues that continue to vex employers and the attorneys who advise them. Panelists will engage in an advanced discussion of complex E-Verify issues.*

- Registration Options for Employers with Complex Legal Structures
- Worksites vs. Hiring Sites for Staffing Agencies, STEM Students, and Federal Contractors
- Balancing State Law Issues with the Federal MOU
- Advanced Employer Challenges and Strategies for Resolution
- Monitoring and Compliance Desk Reviews

*Faculty:*

\*Katie Nokes Minervino (DL), AILA Verification & Documentation Liaison Committee Vice Chair, Portland, ME

\*Daniel Brown, Washington, DC

\*Marcine Seid, Palo Alto, CA

12:25 pm – 1:10 pm **LUNCH (PROVIDED)**

1:10 pm – 1:40 pm **LUNCH KEYNOTE CONVERSATION**

\*Paul W. Virtue, Washington, DC

1:40 pm – 2:40 pm **SUBPOENAS, WARRANTS, AND REQUESTS FOR INFORMATION**

*Employers frequently receive requests (or demands) for access to individuals, worksites, I-9s, E-Verify documentation, employee schedules, and related information from various individuals, agencies (state, federal, and local), and companies. Some of these requests are in the form of a Notice of Inspection, a warrant, or a subpoena, and others are not. Panelists will discuss whether it is appropriate to provide the requested access and/or documentation in a variety of circumstances, the differences between judicial and administrative warrants and subpoenas, and how to prepare clients to respond appropriately to each.*

- Judicial vs. Administrative Subpoenas and Warrants
- Notices of Inspection (no Subpoena or Warrant Required)
- Other Requests for I-9s and E-Verify Data/Documentation
- When to Comply and When to Push Back
- Response Protocols and Policies for Employers

*Faculty:*

\*Nicole A. Kersey (DL), St. Petersburg, FL

\*Charles H. Kuck, AILA Past President, Atlanta, GA

\*Lindsay L. Chichester Koren, Orlando, FL

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

2:45 pm – 3:45 pm **RAID PROTOCOLS**

*We are back to the future with the Trump administration encouraging and organizing worksite raids on businesses. DHS is issuing subpoenas, executing search warrants, and arresting workers, all with an eye towards criminal prosecution of the employer. While many practitioners have handled I-9 audits, addressing the issues that may arise in a raid are new to many, and with a raid, the process can move very quickly. Panelists will dust off the tactics and legal skills you need to manage a worksite raid.*



- Raid or Audit: Distinguishing Factors
- Signs that a Raid May Be in Your Client’s Future
- When Criminal Defense Counsel Is Necessary
- Employee Rights and Employer Obligations
- Raid Toolkit: How to Protect Employers Before, During, and After a Raid

*Faculty:*

*\*Amy L. Peck (DL), AILA Board of Governors, Omaha, NE*

*\*Lori T. Chesser, Des Moines, IA*

*\*John J. Commisso, Cambridge, MA (criminal defense attorney)*

3:45 pm – 4:00 pm

**NETWORKING BREAK**

4:00 pm – 5:00 pm

**THE EFFECT OF CORPORATE STRUCTURE**

*The rules and guidance affecting worksite enforcement actions are tough enough, but the corporate structure of the employer can add layers of questions and have major effects on the process. The structure of the potential “employer” in a worksite investigation can touch on jurisdictional issues, liability, and joint employment, and can have a significant impact on how fines are calculated. In addition, as employers change structure through mergers, acquisitions, or other reorganizations, similar issues can arise leading to questions that even the government is not clear on. Join our panelists as they review the various issues that may emerge based on the make-up of the business, and identify strategies to use during an investigation.*

- Parent, Subsidiaries, Franchises, Prior Ownership: The Far Reach of ICE in Worksite Investigations
- Mergers and Acquisitions: Red Flags and Best Practices
- Strategies to Use During a Worksite Investigation

*Faculty:*

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

*\*Marketa Lindt, AILA 1st Vice President, Chicago, IL*

*\*Enrique Gonzalez III, Coral Gables, FL*

*\*TBD, M&A Attorney*

5:00 pm

**CONFERENCE CONCLUDES**

**CONFERENCE PROGRAM COMMITTEE**

*Sharon R. Mehlman, AILA Conference Program Chair/Verification & Documentation Liaison Committee Chair,  
San Diego, CA*

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

*Elise A. Fialkowski, Philadelphia, PA*

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