

## **I-9 Compliance Requires Consistency: OCAHO Slaps Enhanced \$330K Fine on Employer for Repeating Offense**

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Given the employer's status as a "Second Offender," the Office of the Chief Administrative Hearing Officer (OCAHO) ordered that a penalty of \$329,895, assessed by ICE agents involved in investigating the company's I-9 practices, be upheld. In [USA v. Durable, Inc.](#), presiding Judge Helen K. Thomas recognized that the employer had incurred 300 I-9 violations in the current investigation, after paying a \$30,000 fine in a settlement with the legacy INS in 1989. Judge Thomas agreed with the government that the penalty should be enhanced because, she states:

The penalties Durable previously paid clearly did not have the desired deterrent effect, inasmuch as Durable apparently did not alter its behavior to conform to the requirements of the law after it entered the settlement agreement. Perhaps a higher penalty will have a more motivating effect.

This opinion reflects the current trend of ICE and Homeland Security Investigations (HIS) to seek aggressive civil penalties for I-9 investigations and of the OCAHO to evaluate each case squarely on its merits. As the government uses the E-Verify database more to gather information and data against employers registered (voluntarily or through state mandate or FAR obligations), I-9 and E-Verify compliance protocols and practices are critical for employers.

Organizations that have been the subject of INS, DHS or ICE investigations are under greater scrutiny. Review your current protocols and make sure you review I-9 and E-Verify compliance on a semi-annual basis. Jackson Lewis provides training, webinars, and a comprehensive suite of services to help employers install and maintain I-9 and E-Verify compliance.

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