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Thursday, December 14, 2017 - 2pm ET

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WEBINARS

Preparing for the Storm: What Mobility Professionals Should Know about I-9 Audits

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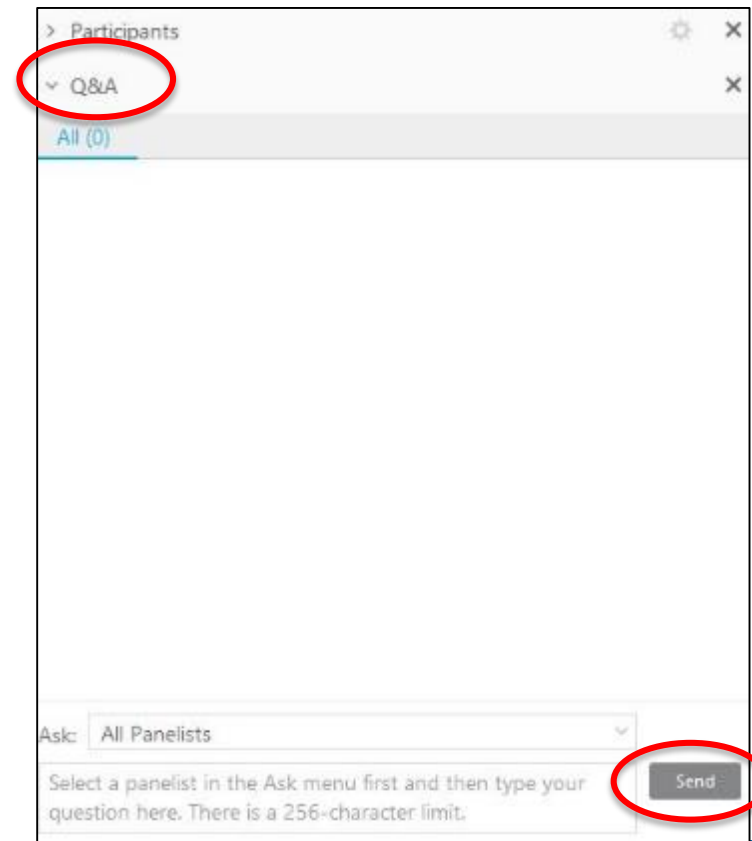
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Today's Presenters

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Agenda

- Employment Verification Challenges for Global Companies
- I-9 Enforcement under President Trump
- AB450: Complying with California's Worksite Enforcement Law



Form I-9

- Employer must, through completion of the Form I-9, verify the identity and work authorization of every employee hired after November 6, 1986.
- Strict timelines:
 - Section 1 on or before 1st day of employment
 - Section 2 within three business days
- Employer must retain the Form I-9 and make it available within 3 days of a request by the government.
- Employer is not required to complete a Form I-9 for:
 - Individuals providing casual domestic services (sporadic, irregular or intermittent),
 - Independent contractors (do not set hours or provide tools), or
 - Employees working outside the U.S.



E-Verify

- Mandatory for federal contractors and for employers in many states. For all other companies, it is a voluntary system.
- After Form I-9 is completed, Form I-9 data is submitted to government and bounced against Social Security Administration and Department of Homeland Security databases to verify the employment eligibility of:
 - Newly hired employees, and
 - Existing employees assigned to work on a qualifying federal contract.



Common I-9 Challenges for Global Companies



First Day of Employment

- **Challenge:**

- Employee arrives on the weekend and does not begin working until mid-week.

- **Rule:**

- Employee is required to complete Section 1 of Form I-9 on or before the end of the first day of employment.
- First day of employment is the first day the employee makes himself or herself available for work. It is not the first day the individual arrives in the U.S.

- **Best Practice:**

- Ensure consistent policy and practice of I-9 being completed on first day employee is in the office.



Stealth/Short-Term Transfers

■ **Challenge:**

- Mobility and Employment Verification teams often do not know about L-1s (intracompany transfers) or other workers who remain on overseas payroll but who will be working within the U.S.

■ **Rule:**

- A Form I-9 is required irrespective of how long the individual works in the U.S. and irrespective of who pays the employee.
- The I-9 obligation is triggered when there is a “hire,” which means the individual performs labor or services in return for wages or other remuneration (includes food or lodging) in the U.S.

■ **Best Practice:**

- Build I-9 guidance into travel policy/documents.
- Place burden on employee to complete Form I-9.
- Coordinate with travel/housing to catch silent workers.



Social Security Number Delays

■ **Challenge:**

- Employee is only in U.S. for a few days and it takes weeks to obtain a Social Security Number.

■ **Rule:**

- A Social Security Number (SSN) is required when employer participates in E-Verify.
- An employer must close out E-Verify record if employee departs before E-Verify inquiry is run.

■ **Best Practice:**

- Instruct employees to apply for SSN and update I-9 when obtained.
- Establish policy to have clear standards for when to close out E-Verify record based on employee departure from U.S.



Employees Who Bypass Standard Onboarding Process

- **Challenge:**

- Employee arrives in U.S. and goes straight to a client location.

- **Rule:**

- The Form I-9 can be completed by anyone acting on behalf of the company (including a client's employee). A notary is not required.
- The company remains liable for any errors on the form.

- **Best Practice:**

- Establish an “oversight team” that is available to support the remote hire process and can check the quality of the work.
- Be Aware: electronic I-9 software processes at HQ are often not available in remote locations



Worksite Enforcement Under President Trump



*Four to five times more worksite
enforcement in upcoming year*

Vigorous prosecution of employers

FOR IMMEDIATE RELEASE

Thursday, September 28, 2017

**Asplundh Tree Experts, Co.
Pleads Guilty To Unlawful Employment Of Aliens**

PHILADELPHIA –Asplundh Tree Experts, Co., one of the largest privately-held companies in the United States, headquartered in Willow Grove, Pennsylvania (“Asplundh”), pleaded guilty today to unlawfully employing aliens, in connection with a scheme in which the highest levels of Asplundh management remained willfully blind while lower level managers hired and rehired employees they knew to be ineligible to work in the United States, announced acting United States Attorney Louis D. Lappen. Following the guilty plea hearing today, the Honorable John R. Padova sentenced the company to pay a forfeiture money judgment in the amount of \$80,000,000.00 and abide by an Administrative Compliance Agreement, as set forth by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Philadelphia. Pursuant to a separate Civil Settlement Agreement, Asplundh will pay an additional \$15,000,000.00 to satisfy civil claims arising out of their failure to comply with immigration law.



I-9 Audit: Triggers

- Driven by the local Immigration and Customs Enforcement (ICE) Special Agent in Charge.
- Common Factors
 - Whistleblower: current or previous employee contacts government
 - Government scrutiny of certain industries
 - Referral from another government agency (e.g., DOJ, USCIS Monitoring and Compliance, DOL)



I-9 Audit: First Steps

- Contact in-house and external counsel. Protect attorney-client privilege.
- Gather Forms I-9 and relevant employee records.
- Separate any I-9s that are no longer required to be retained under regulations.
 - Do not destroy documents unless action reviewed and cleared by counsel.
- Work with counsel to review Forms I-9 and develop strategy (including, possibly, mitigation).



I-9 Audit: Penalties

- Criminal penalties for engaging in pattern or practice of hiring, recruiting, or referring for a fee unauthorized aliens.
- Civil fines add up quickly (\$216-\$2,156 per Form I-9 for first violation).
- Workforce disruption.
- Debarment from government contracts.
- Reputation harm/shareholder value.



I-9 Audit: Positioning

- Participate in E-Verify? Pros and cons of voluntary enrollment.
- Have a clear, written I-9 policy – and be able to show you apply that policy.
- Lead internal training and “push out” I-9 policies within the company.
- Conduct internal audits on a regular basis – but engage counsel to avoid creating more risk.



Navigating California's Worksite Enforcement Law AB450



AB450 Overview

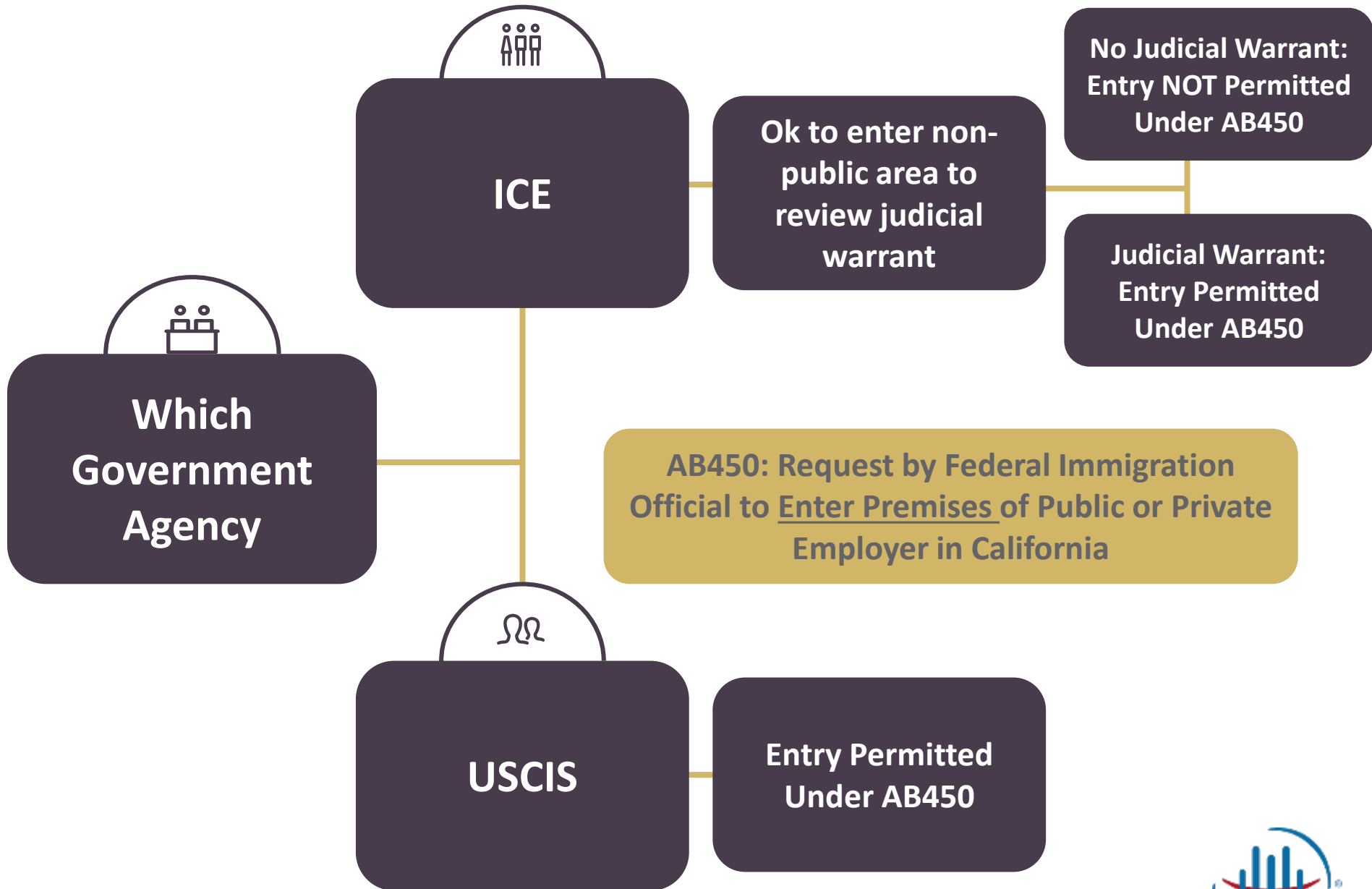
- Becomes effective January 1st, 2018.
- Applies to public and private employers in California.
- Imposes new obligations on employers regarding:
 - Access to premises by federal immigration enforcement officials
 - Access to employee records by federal immigration enforcement officials
 - Notice to employees and union regarding I-9 audits
 - Form I-9 reverification of existing employees



Federal Access to Place of Employment

- Employer may not provide voluntary consent to a federal immigrant enforcement agent to enter any nonpublic areas of a place of labor.
- Provision does not apply if the enforcement agent has a judicial warrant. An administrative warrant issued by the Department of Homeland Security (DHS) would not qualify.
- Employer is permitted to take the agent to a non-public area for purposes of verifying whether the agent has a judicial warrant.



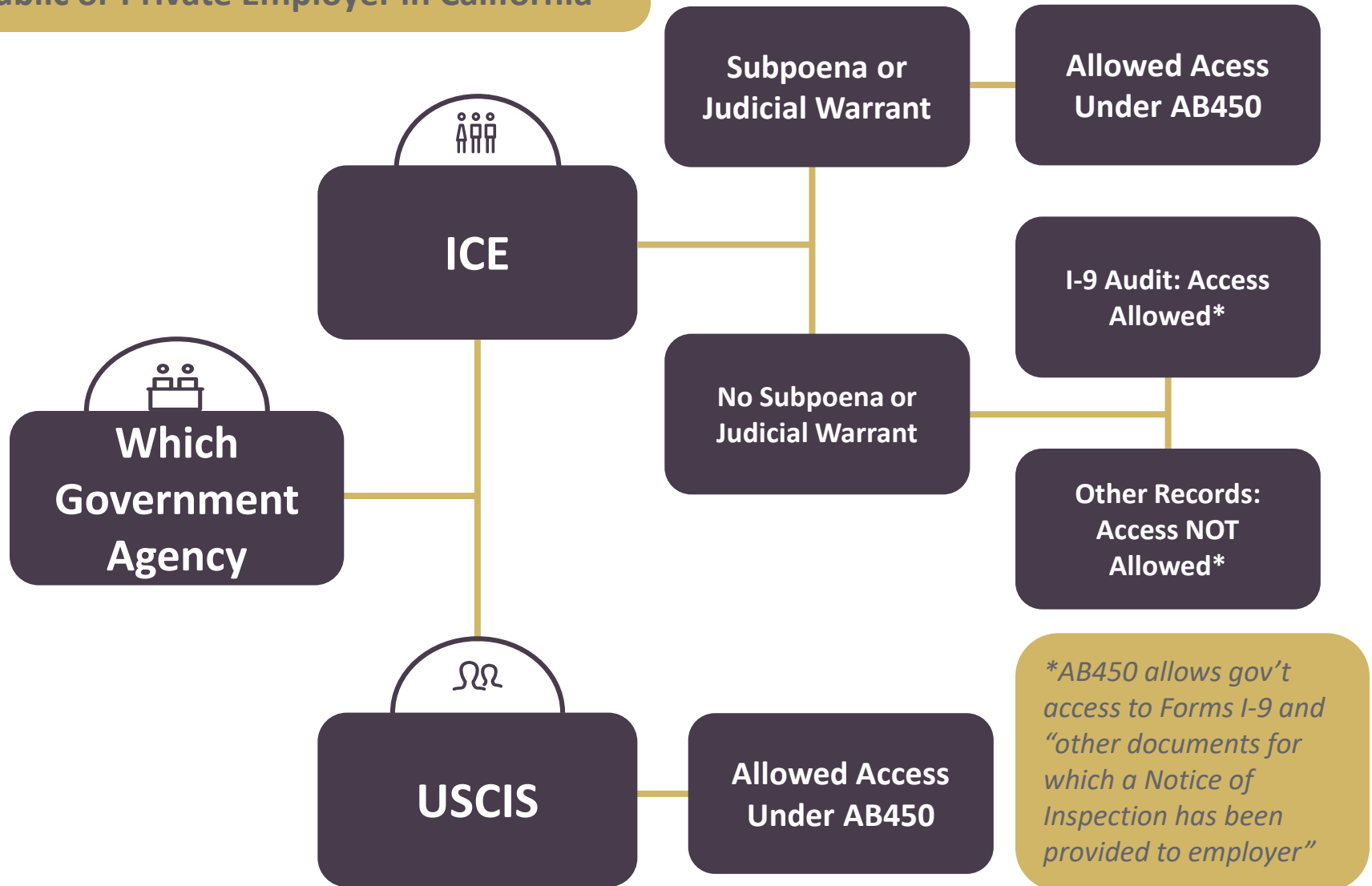


Federal Access to Employee Records

- Employer may not provide voluntary consent to a federal immigrant enforcement agent to access, review, or obtain an employee's records.
- Exceptions:
 - Federal enforcement agent has a subpoena (judicial or agency issued) or a judicial warrant (court issued)
 - It is not a violation for employer to provide Forms I-9 and "other documents" for which an ICE Notice of Inspection has been issued.



**AB450: Request by Federal Immigration
Official to Access Employee Records of
Public or Private Employer in California**



AB450: Obligations to Provide Notice of Form I-9 Audit and Results to Employees in California

**ICE Notice of
Inspection
(NOI)**

**Notice of
Inspection
within 72 Hours**

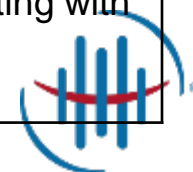
**Notice of NOI
Results within
72 Hours**

**Notice must be provided to employees and union
representative**



Obligation to Provide Notice (continued)

NOTICE	Notice of Inspection	Notice of Inspection Results
WHO	To all employees at place of employment.	“Affected Employees” - i.e. individuals who the government identifies as lacking work authorization or having suspect documents.
WHEN	Within 72 hours of receiving the Notice of Inspection (NOI).	Within 72 hours of receiving the results.
HOW	Posted at place of employment and given to union representative. Individual notice to employee upon request.	Individual employee via hand delivery or email and provided to union representative.
WHAT	Notice must provide the following information: <ul style="list-style-type: none"> ▪ Government agency, ▪ Date NOI received, ▪ Copy of NOI, and ▪ Nature of inspection (if known). 	Notice must provide the following information: <ul style="list-style-type: none"> ▪ Deficiencies identified by gov’t, ▪ Time period for correcting deficiencies, ▪ Time and date of meeting with employer to correct deficiencies, and ▪ Notice that employee has right to representation during any meeting with employer.



Restriction on I-9 Reverification

- AB450 prohibits an employer from re-verifying employment authorization unless allowed under federal law.
- Current federal law allows an employer to re-verify an employee's work authorization:
 - When employee's work authorization expires
 - To comply with Federal Contract E-Verify obligations
 - When employee presents new identity and evidence of work authorization
 - To address deficiency based on self-audit
 - To address deficiency based on government audit



Final Thoughts

- Global mobility professionals should coordinate carefully with I-9 and E-Verify employment verification team.
- Global mobility professionals should review and weigh in on employment verification policies and practices.
- A decade without enforcement: don't be surprised if there is a lack of enthusiasm inside your organization.



Questions & Answers

Q and A



Thank you for attending!

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