

Employers Face More Scrutiny on Worker Compliance

Prosecution of Immigration Crimes Rises in 2009

Pundits are wondering what the new administration's stance will be on the hot-button issue of immigration. Although President Obama has not made any comprehensive official pronouncements, by all accounts it appears that employers will face increased scrutiny and more vigorous enforcement of existing laws outlawing the employment of unauthorized aliens.

According to government reports, the government has stepped up immigration enforcement in the past several months. Federal prosecution of immigration related crimes increased considerably during the first few months of the Obama Administration. These reports show over 9,000 new immigration prosecutions in April 2009, which represents a 33% increase from one year ago.

A couple of weeks ago, the Department of Homeland Security, which oversees the immigration service, announced that it will be auditing I-9 forms of some 600+ employers as part of a nationwide crackdown on the employment of unauthorized workers. All employers must comply with applicable hiring/documentation regulations or face civil fines – and possible criminal prosecution.

Implementation of the mandatory E-Verify rule for federal contractors was delayed for the fourth time, until September 8, 2009, to give the Obama Administration more time to review the rule before it took effect. This regulation requires most federal contractors and subcontractors to use the government's E-Verify System. The administration supports the E-Verify program.

E-Verify is the electronic employment verification system operated by U. S. Citizenship and Immigration Services, which verifies the



EMPLOYMENT LAW

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employment eligibility of newly hired employees. E-Verify compares information from an employee's Form I-9 against federal government databases to verify an individual's employment eligibility. According to DHS Secretary Napolitano, requiring federal contractors to use this system "will create a more reliable and legal workforce."

As part of a recent announcement regarding the Administration's support for the program, DHS addressed some of the criticisms of E-Verify, including the claim that the system is not designed to catch stolen or borrowed Social Security numbers, causing an unacceptable rate of incorrect non-matches. DHS reports that it has been enhancing E-Verify to address the issue of errors, such as adding access to the naturalization database records to better verify naturalized citizens' status and incorporating Department of State passport data into the E-Verify system to reduce mismatches among foreign-born citizens. Other improvements include adding new tools to help prevent fraud, misuse, and discrimination, as well as to increase privacy protection.

Despite the Administration's support for E-Verify, it is still uncertain whether the rule will become effective in September. Still pending is a federal lawsuit by the U.S. Chamber of Commerce that challenges the regulation and seeks to block its enforcement. Until this law-

suit is resolved, it is unlikely that the DHS will be able to implement the E-Verify program.

In mid-2007, The Bush administration announced its controversial social security "No-Match" rule. A federal court enjoined enforcement of the rule in early 2008. The proposed rule establishes procedures for employers to follow when they receive so-called "No-Match" letters from the Social Security Administration or a notice from DHS questioning work eligibility information provided by an employee.

DHS Secretary Napolitano announced last month that DHS is rescinding the "No-Match" rule. This will be welcomed by many employers who had concerns about the portion of the rule which required employers to follow strict time limits and take adverse action against those employees whose social security numbers and names do not match. Those who didn't follow the controversial rule would have faced liability for knowingly employing unauthorized workers.

There is no doubt that the Obama Administration is serious about workplace enforcement. With employers facing heightened scrutiny and the specter of civil and criminal penalties, the time to verify compliance is before an enforcement action has been undertaken.

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