

New Immigration Enforcement Efforts Aimed at Employers

July 8, 2009

The Obama Administration announced earlier this year that U.S. Immigration and Customs Enforcement (ICE) would implement a new, comprehensive strategy to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce. Moreover, the Administration made it clear that this new enforcement effort would be targeted at employers and ICE is now focusing resources on investigating employers suspected of employing undocumented workers.

Employers are required to prepare and retain Form I-9, Employment Eligibility Verification for every new hire. The Form I-9 verifies the identity and employment eligibility for each of their employees. As part of the process, employers are required to determine whether the document(s) reasonably appear to be genuine and related to the individual. Once the employer has accepted such documents, they record this information on Form I-9.

On July 1, 2009, ICE launched a new initiative to investigate employer compliance with the I-9 requirements, issuing an unprecedented 652 Notices of Inspection (NOIs) to businesses nationwide. The number of NOIs issued by ICE on this one day is more than the total number issued by ICE last fiscal year (503). If your business receives NOI, you will be required to promptly produce I-9 forms for all employees employed during the period covered by the audit, and will likely be asked to also produce relevant payroll records. ICE will carefully review the I-9 forms to determine (1) that the employer has a properly completed Form I-9 for each employee and (2) that the employer has not improperly employed any unauthorized workers. ICE has a wide range of potential penalties that it can assess, including both significant civil penalties for I-9 paperwork violations, severe civil penalties for the knowing employment of unauthorized workers, and even criminal penalties for serious violations.

Moreover, this initiative by ICE to implement the Administration's comprehensive employer enforcement strategy sends a clear message to employers that they need to act now to ensure that their I-9 records are in good order. We strongly recommend that all employers have an effective Form I-9 compliance strategy in place, as well as an audit program to identify and correct any I-9 problems *before* ICE shows up at your door. To that end, the Immigration practice group at Foley Hoag LLP has developed an I-9 Compliance program that will assist an employer to assess its existing Form I-9 compliance program, evaluate its current I-9 form completion and recordkeeping practices, and to determine whether the E-Verify or Image programs are appropriate for the employer.

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