



New Immigration Enforcement Effort Is On The Way

Insights

9.01.09

(Labor Letter, September 2009)

The Department of Homeland Security (DHS) took another step in its worksite enforcement efforts on August 19, 2009 when it announced its intention to rescind the embattled Social Security No-Match Rule, and to focus on increased compliance through its E-Verify, IMAGE and other employment verification programs.

All of the enforcement activities that have taken place since the beginning of July should put employers on notice that the government is serious about enforcing the nation's immigration laws and getting tough on employers who hire unauthorized workers. Both DHS and Immigration and Customs Enforcement (ICE) have been busy ramping up their scrutiny of employers through increased audits and on-site inspections. It's more important than ever that you ensure that your company's I-9 forms are in compliance with the law and that you are not caught off guard if ICE pays a surprise visit.

Here is our advice on preparing your company and employees for any of the following DHS and ICE actions.

ICE I-9 Audits

An official from ICE speaking publicly at a recent conference stated that the agency is nearing completion of its review of I-9 documents turned over in response to the 652 Notices of Inspection issued to employers across the country on July 1. The official indicated that the agency is preparing to launch a second round of nationwide employer audits in late summer or early fall. The initial round of I-9 audits targeted businesses in manufacturing, hospitality, construction, and trucking, among others, and were driven either by complaints or on-going ICE investigations.

If you receive a Notice of Inspection, insist on your right to a three-day notice period and contact your attorney. The lawyers in our Global Immigration Practice Group can assist you in preparing the I-9 documentation requested in the notice. And if you are using the Fisher Phillips Electronic I-9 Solution program to electronically complete and store I-9 forms, you will be able to provide the I-9 forms in electronic form to ICE.

USCIS Site Visits for H-1B Program

U.S. Citizenship and Immigration Services (USCIS), a division of DHS responsible for processing visa

petitions, has initiated surprise site-visits to H-1B employers to ensure compliance within the H-1B visa program requirements, and to confirm that the H-1B visa holder is working and being paid in accordance with the terms of the H-1B visa petition. Some employers report that the investigators conducting these visits have asked to speak with the individual who signed the visa petition on behalf of the company, sought to confirm the employee's current title, salary, and working conditions, requested a brief interview with the H-1B visa holder, and taken photos of the outside of the building. If a USCIS investigator comes to your office, we recommend that you cooperate with the inquiry and contact your immigration counsel as soon as possible.

Social Security No-Match Rule

DHS published a notice on August 19 proposing to rescind the Social Security No-Match rule that was issued by the Bush Administration in 2007. The rule was never implemented due to a lawsuit challenging the legality of the rule. Comments regarding the proposal to rescind the rule are due by September 18 and rescission of the rule is expected before the end of September. The Social Security Administration (SSA) stated that it would not issue any No-Match letters until the pending litigation had been resolved.

A rescission of the rule would resolve the litigation and allow the SSA to resume issuance of No-Match letters. With no rule in place, employers who receive a SSA No-Match letter will not be required to take steps to verify an employee's work authorization but we recommend that you review internal records to verify the information to determine whether additional verification of the employee's work authorization is warranted and lawful. If you have questions, check with us.

E-Verify Requirement For Federal Contractors

A long-delayed rule requiring certain federal contractors and subcontractors to use E-Verify is set to take effect on September 8, 2009. All federal contracts covered by the rule that are awarded (or an existing indefinite delivery/quantity contract that is amended) on or after September 8 will contain a clause requiring the prime contractor and most subcontractors to use E-Verify to check the work authorization of covered employees.

The E-Verify System currently allows employers to verify the employment eligibility of only newly-hired employees against information contained in the SSA and DHS databases. But under this rule, covered federal contractors and subcontractors will be required to use E-Verify during the term of the covered contract to verify the employment eligibility of **both new-hires and current** employees who are directly performing work on the covered federal contract.