Five Things You Need To Know About Immigration Law – Right Now

Insights
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Retailers have been spared the high-profile immigration woes that some industries (such as manufacturing, food processing, and hospitality) have faced in the past few years. But the new administration recently announced that it is going to turn the heat up on employers from all industries, so now more than ever it is important to ensure that your business is protected. Here are five quick things about immigration laws that are important for you to know.

1. Form I-9 - Use the New Version

The new Form I-9 (revised 2/2/09) went into effect on April 3, 2009. The new form requires that you accept only unexpired documents to verify employment authorization and identity, removes some documents from the List of Acceptable Documents, and expands the citizenship status options in Section 1. Although the 2/2/09 version of the form has an expiration date of June 30, 2009, U.S. Citizenship and Immigration Services (USCIS) has authorized the continued validity of the form until they issue a new version. The current version of the Form I-9 and the new I-9 handbook are available on our website or at the USCIS website.

You may use Section 3 to re-verify the work authorization for employees who work on a sporadic basis (such as students who are rehired regularly to work during summer breaks and school holidays throughout the year), but only if they are being re-hired within three years of the original start date. Section 3 is completed on the new version of the I-9 form, and the form containing Section 3 is attached to the original form.

2. Worksite Enforcement

The Department of Homeland Security issued new worksite enforcement guidelines on April 30, 2009 announcing a shift of focus towards criminal prosecution of employers who knowingly hire illegal workers. Immigration and Customs Enforcement (ICE) will continue to arrest illegal workers as they are discovered during worksite raids and will use civil and administrative tools (such as civil fines) to punish employers and deter illegal employment.

In line with the new enforcement guidelines, ICE issued 652 I-9 Form Notices of Inspection to employers across the U.S. on July 1. There is every indication that this is just the first wave of ICE I-9 Form audits and that no industry is immune. The initial round of I-9 audits were triggered by

I-9 form audits and that no industry is immune. The initial round of I-9 audits were triggered by complaints or were the result of an on-going ICE investigation. Although the retail industry has not been high on the list as a target for worksite raids, we expect that to change as the new administration ramps up its efforts to show that it is tough on enforcement. We recommend that you conduct regular I-9 audits and ensure that you have an I-9 form for all employees hired after November 6, 1986.

3. Social Security No-Match Rule

In August 2007, the Department of Homeland Security (DHS), issued a rule entitled *Safe-Harbor Procedures for Employers Who Receive a No-Match L*etter ("No-Match Rule"). The rule has been on hold since 2007 as a result of a lawsuit filed by business groups. DHS announced on August 19 that it proposes to rescind the Social Security No-Match rule and focus its enforcement efforts on increased compliance through I-9 Form audits and other employment verification programs. Rescission of the No-Match Rule is expected to occur before the end of September. Once the rule has been rescinded and the litigation resolved, the Social Security Administration (SSA) will resume issuance of the No-Match letters. We expect the DHS to view a SSA No-Match letter as notice that the identified employees may not be authorized to work in the U.S. and that the employer should take remedial steps.

4. Federal Contractor E-Verify Rule

Starting on September 8, 2009, federal contractors and subcontractors will be required to enroll in E-Verify when they are awarded a federal contract or subcontract that includes the E-Verify requirement or when an existing contract is amended to include the E-Verify clause. Covered employers will be required to E-Verify all new hires company-wide and all current employees assigned to work on the federal contract. The rule covers prime federal contracts of $100,000 and over, which have a performance period of 120 days or longer.

Not covered are contracts for work to be performed only outside the U.S., for only commercially available off-the-shelf (COTS) items (or which would be COTS items with only minor modifications), or for food and agricultural products shipped as bulk cargo and which would otherwise be classified as COTS items. For example, if you sell pencils to the government and the pencils are the same as those you sell to the general public, it is unlikely that your contact would be covered by this rule. Subcontractors are covered if providing services or construction with a value of $3,000 or more.

5. State Immigration-Related Laws

Across the country, states continue to enact employment-related immigration legislation, including legislation requiring certain employers to use E-Verify to electronically verify the employment eligibility of their newly hired employees. For example, all employers in Arizona are required to use E-Verify for all newly-hired employees. Employers in Mississippi and South Carolina are required to use E-Verify on a phased-in basis tied to the number of employees. Several states require public employers and private employers with state contracts to use E-Verify, including Arkansas, Colorado, Delaware, Georgia, Minnesota, Nebraska, Rhode Island.

Keeping up-to-date on changes in immigration law will continue to be an important component in protecting your business and employees.