



Top 11 Immigration Mistakes Employers Made In 2011

Insights

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Give your company the gift of an immigration audit this year – it may just keep your company off the government's naughty list. Here are the top 11 immigration mistakes employers made in 2011:

1. The \$5.9 million Error: Failing To Properly Pay H-1B Workers

In March, the U.S. Department of Labor Wage and Hour Division assessed over \$1.7 million in civil money penalties and ordered the payment of over \$4.2 million in back wages against Maryland's Prince George's County Public Schools for illegally reducing the wages of 1,044 foreign H-1B teachers when it required the teachers to pay H-1B filing fees.

2. I-9 Document Abuse

Farmland Foods Inc. agreed to pay \$290,000 to settle claims that it required non-U.S. citizens to present specific work authorization documents, such as permanent resident cards or employment authorization cards, rather than allowing the employee to choose a document from the list of acceptable documents on the Form I-9.

On December 7, 2011, the Department of Justice filed a lawsuit against the University of California, San Diego Medical Center for allegedly engaging in a pattern and practice of I-9 document abuse by improperly requesting that employees produce more documents than are required by Form I-9 to establish an employee's identity and employment authorization.

3. Failing to Properly Notify USCIS of an H-1B Worker's Termination

DOL ordered Ganze & Company to pay \$156,000 in back pay to an H-1B worker terminated before the H-1B employment period started because the company failed to promptly withdraw the H-1B with USCIS and pay for the reasonable cost of the H-1B worker's return transportation to his home country.

4. Visa Fraud

In April 2011, the owners of Worldwide Software Services were sentenced to more than 3 years in prison after pleading guilty to a \$41 million scheme using a software company as a front to bring foreign workers into the U.S. illegally.

5. Citizenship Status Discrimination

DOJ recently settled a case against the American Academy of Pediatrics for its alleged practice of posting employment opportunities on its website for doctors, nurses and other professionals specifying that only U.S. citizens and certain visa holders could apply.

6. Employing Unauthorized Workers

A Michigan dairy farm and its owners pleaded guilty to charges of employing illegal immigrants and agreed to pay over \$2.7 million in fines. The dairy farm failed to fully and accurately complete I-9 forms for the workers, concealed unauthorized workers from ICE, and encouraged or induced the unauthorized workers to reside in the U.S.

7. Failure to Abide by State Immigration Laws

Employers are often unaware of the myriad of state immigration requirements.

8. Failing to Abide by the Deemed Export Rule

The Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) impose licensing requirements on the export, reexport, and in-country transfer of a wide variety of items that are controlled for national security, foreign policy, and other reasons. The requirements include an obligation for U.S. persons, including corporate employers, to seek and receive a U.S. Government license before releasing in the U.S. to foreign persons, including foreign person employees from certain countries, various types of technology controlled by these regulations. This obligation is referred to by the Commerce Department as the “deemed export” rule because releases of controlled technology to foreign persons in the U.S. are “deemed” to be an export to the person’s country or countries of nationality.

9. Failure to Properly Complete Form I-9s

Alyn Industries was ordered to pay \$43,000 for 62 I-9 violations, including failing to present I-9s for 2 employees, failing to ensure that Section 1 of the Form I-9 was completed for 1 employee, and failing to complete Section 2 of the I-9 Form for 59 employees.

10. Taking Adverse Actions Against Employees Based on E-verify Tentative Nonconfirmations

If the E-Verify system issues a tentative non-confirmation (TNC) in response to a query, the employer must provide the employee with a notice generated by E-Verify and information on how to contest the TNC. If the employee elects to challenge the TNC, the employer is required to provide the employee with a referral letter containing instructions and contact information for the agency that triggered the TNC. Employers cannot terminate or take any other adverse action against an employee who

contests a TNC while the TNC is in process. The employee is allowed eight federal government work days to contact the appropriate federal agency.

11. Taking Adverse Actions Against Employees Based Solely on SSA No-Match Letters

There is no clear guidance from the government on how an employer should respond to No-Match Letters received in 2011. Employers should take the following steps upon receipt of a SSN No-Match letter:

- Check your records to make sure your Human Resources department accurately recorded the employee's information. If an error was made, provide the SSA with any corrections;
- If your records are correct, promptly notify the employee that you received a SSN No-Match letter and ask the employee to go to SSA to address any discrepancy;
- Do not take any adverse action against the employee based solely on the SSA No-Match letter;
- Apply any procedure developed to respond to the SSA No-Match letters in a non-discriminatory way; and
- Give the employee a reasonable amount of time to correct any discrepancy. If the employee indicates that he visited SSA and the situation is resolved, please note the actions you and the employee took to resolve the discrepancy in the event of an audit.

In order to avoid the above-listed errors, your company's resolutions for 2012 should include ensuring immigration compliance programs are in place, up-to-date, and followed.

Related People



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