

## ABERCROMBIE & FITCH FINED \$1 MILLION AFTER I-9 AUDIT

Insights

Sep 30, 2010

The U.S. Immigration and Customs Enforcement (ICE) announced Tuesday that it had settled with clothing retailer Abercrombie & Fitch on a fine in excess of \$1,000,000 for violations of the Immigration and Nationality Act. The violations related to an employer's obligation to verify its workers for employment eligibility.

Under the Immigration and Reform Act of 1986, employers are required to complete and retain a Form I-9 for each employee and must review original documentation for identity and employment eligibility to determine if the documents reasonably appear to be genuine and relate to the person.

This case began in November, 2008, with an I-9 inspection of the company's retail stores in Michigan, and focused on technology-related deficiencies in Abercrombie & Fitch's electronic I-9 system. The company was **not** in violation of knowingly hiring unauthorized workers in the investigation. A&F has since implemented new procedures and retooled its immigration compliance program.

"Employers are responsible not only for the people they hire but also for the internal systems they choose to utilize to manage their employment process and those systems must result in effective compliance," said Brian M. Moskowitz, special agent in charge of ICE's Homeland Security Investigations for Ohio and Michigan.

The hefty fine serves as a reminder that companies must ensure that their I-9 process, including electronic and other employment verification procedures, are fully compliant and undergo legal review and assurances for meeting the high standards required for full immigration compliance. Although guidance was issued in an interim I-9 regulation in 2006, the final regulation was not issued until July 2010.

"We are pleased to see Abercrombie working diligently to complete the implementation of an effective compliance system; however, we know that there are

other companies who are not doing so. This settlement should serve as a warning to other companies that may not yet take the employment verification process seriously or provide it the attention it warrants," said Moskowitz.

### **Are Electronic Procedures The Way To Go?**

A well-developed electronic I-9 system is a popular tool that can assist with detecting missing information and upcoming expirations of work-authorization documents. It can also serve as a reminder for timely completion, maintain recordkeeping standards for retention, reduce potential fines for paperwork violations, and show a company's good faith compliance efforts.

But an electronic I-9 system itself is not enough. Training of HR and company staff on proper use of the system, as well as on the legal requirements of I-9 review and documentation requirements, is imperative for an immigration compliance program that encompasses adherence to both federal and state immigration laws.

There are an estimated 11 million undocumented people in the U.S. and 7.8 million unauthorized workers were in the labor force in 2009, according to the PEW Research Report from September 1, 2010.

For more information regarding immigration compliance, including E-Verify, I-9 compliance and the Fisher Phillips Electronic I-9 Solution program to electronically complete and store I-9 forms, contact your Fisher Phillips attorney, or any member of our Global Immigration Practice Group at (404) 240-4224 or via email at [immigration@fisherphillips.com](mailto:immigration@fisherphillips.com).

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