

CLIENT ADVISORY

Employers Targeted By Homeland Security

The Department of Homeland Security (DHS) has shifted its immigration enforcement activities to target employers that hire undocumented workers instead of targeting the workers themselves. This change should trigger a review of your hiring practices with regard to immigration and discrimination.

Employers should be on notice to pay close attention to their employment eligibility verification processes. Failure to comply with the federal immigration laws can result in costly fines as well as civil and criminal charges. Because the federal government assesses penalties on a per-alien basis, the cost of fines can multiply quickly.

Last year, DHS issued new guidance to U.S. Immigration and Customs Enforcement (ICE) directing the agency to focus its resources on the criminal prosecution of employers who knowingly hire illegal workers. Their goal, according to DHS, is "to target the root cause of illegal immigration." It is clear that DHS sees employers, not undocumented workers, as the problem.

ICE does not randomly investigate employers or specific industries. It bases its investigations on tips from the public, reports from current and former employees, and referrals from other law enforcement agencies.

An employer's Employment Eligibility Verification Process must focus on internal records since this has become a target area of ICE audits. These audits now include the I-9 forms which must be completed when a new employee is hired verifying that the person has the right to work in the United States, along with a review of the individual's identity documents at the time they complete the I-9. The audits include the employer's I-9 practices and general compliance with immigration employment laws, and often result in substantial fines against employers who are not in compliance.

Although your Employment Eligibility Verification Process must verify employment eligibility, at the same time it must also avoid discriminatory practices. Here are a few guidelines concerning your obligations during this verification process:

1. Employers may not discriminate in recruitment, hiring or discharge on the basis of national origin or citizenship status. For example, employers may not treat employees or new hires differently based on their status as a U.S. citizen, Lawful Permanent Resident or refugee/asylee.
2. Employers may not request more or different employment authorization documents than those required under the Immigration Reform and Control Act or refuse to honor tendered documents that on their face "reasonably appear to be genuine and to relate to the individual."
3. Employers may not retaliate against workers who bring discrimination complaints.

ICE has issued new guidelines under President Obama calling for more severe fines and criminal prosecution against employers who violate immigration laws. The directives instruct ICE field offices and agents to focus on employers and supervisors, and ICE has also taken the approach to use the illegal workers themselves to help prosecute their employers. Employers should expect this type of aggressive workplace enforcement of immigration laws to continue in these tough economic times.



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Based on our extensive experience with helping other companies, we are familiar with the proactive steps a company can, and should, take to be protected in the event of an ICE audit in the future. In the situation of discrimination and immigration law, an ounce of prevention is worth a pound of cure.

Please contact your Hahn Loeser attorney if you have any questions or need additional information about your Employment Eligibility Verification Process. Our Immigration and Labor & Employment attorneys (see partial list below) are ready to provide counsel through this process.

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