

IMMIGRATION NEWS

A CLIENT ALERT FROM PAUL HASTINGS

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ICE Announces Major Immigration Enforcement Shift in the Workplace

A massive, 26-state law enforcement operation carried out on Wednesday, April 19 by U.S. Immigration and Customs Enforcement (ICE), signals a new direction in workplace enforcement of the immigration laws that all employers should be aware of. ICE arrested seven executives and nearly 1200 employees of a manufacturer of crates and pallets as part of a crackdown on employers of illegal workers. Authorities raided offices and plants of IFCO Systems, the result of a year-long criminal investigation. Reportedly, federal authorities reviewed a sample composed of 5,800 IFCO employee records last year and determined that 53% used faulty Social Security numbers. ICE arrested the IFCO executives on charges they conspired to transport, harbor and encourage illegal workers to reside in the U.S. for commercial advantage and private financial gain.

The federal government's actions were unusual because ICE's announced worksite enforcement priority since the Sept. 11, 2001, terrorist attacks has focused on industries critical to national security, such as airports and nuclear power plants. Wednesday's raids coincided with an announcement the following day by the Department of Homeland Security of a new national strategy to combat unauthorized employment.

That new strategy is based largely on a major intensification of worksite enforcement efforts. DHS has announced a strategic shift under which it would broaden the scope of businesses it will target, and would bring criminal charges and seize assets to the maximum extent possible, rather than relying simply on administrative penalties to deter or penalize the employment of ineligible workers. This week's enforcement action was also notable for its focus on the fact that the company had received letters from the Social Security Administration (SSA) -- commonly referred to as "no-match letters" -- indicating that social security information reported for some employees of the company did not match information in SSA records. These letters are received quite commonly by employers, including by employers who have properly fulfilled their requirements to verify employment eligibility through the I-9 process. The proper response to receipt of such a letter can be quite complex and delicate, and the stakes for employers upon receipt of a no-match letter are significantly higher in view of this recent enforcement action.

In light of the DHS's heightened and revised workplace enforcement strategy, employers are encouraged to:

- review their I-9 compliance policies and practices, and consider regular self-initiated audits (either internally or through counsel)
- review the appropriate steps to take in the case of a Social Security "no-match" letter and take particular care, with the close advice of counsel, if one is received; and
- pay particular attention to immigration compliance issues in situations involving the use of contractors or involving mergers or acquisitions, including careful review of the contracts surrounding such relationships and transactions.

State Legislatures Debate Immigration Enforcement and Georgia Enacts Stringent Law

State legislatures around the country are debating legislation effectively allowing for state-based enforcement of immigration laws. One of the most stringent such measures to date was recently enacted by the State of Georgia. On April 17, the governor of Georgia signed into law the Georgia Security and Immigration Compliance Act. Among other provisions, the Act prohibits Georgia employers from claiming a tax deduction for most wages paid to workers who have not demonstrated valid immigration status, and it requires any contractor working for the state to confirm the legal status of its employees. In addition, the Act requires all state and local government agencies to verify the legal status of any adult applying for taxpayer-provided benefits, and it requires state police to notify immigration officials if suspects charged with crimes are unlawfully present in the country. Most of the Act's provisions take effect on July 1, 2007.

Georgia's new law is only one of approximately 370 immigration-related bills put forward in 42 states across the U.S. just this year. For instance, the proposed Ohio Unity English Act would mandate that all state and local government documents be printed in English only, and a proposed law in Maine would require proof of citizenship to obtain a driver's license.

Comprehensive Immigration Reform - Legislative Update

Lawmakers on both sides of the political aisle have been working in recent months to craft an immigration reform bill that most can agree on so they can send it to President Bush. Both the Senate and House are in recess and will reconvene on April 24. The Senate was unable to reach agreement on immigration reform legislation before adjourning for recess. Key senators are reportedly discussing possibilities to resurrect debate on the Senate floor in the coming weeks. Should the Senate pass an immigration reform bill, it will most likely contain a package of skilled worker immigration reforms, and it will probably also contain some form of guest worker program for lesser-skilled, essential workers. The bill will then have to be reconciled with the enforcement-focused House bill passed in December 2005. The House bill contains no guest worker program, and no skilled worker reform.

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