

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
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May 2006

Immigration Worksite Enforcement: Are You Prepared for the ICE Storm?

While Congress continues to debate a variety of immigration reform proposals, employers should be mindful of measures already in place. In late 2005, Michael Chertoff, Secretary of the Department of Homeland Security, announced the Secure Border Initiative, which provides for greater government access to and scrutiny of immigration practices at U.S. worksites. Immigration and Customs Enforcement ("ICE") carries out the investigations and, so far, has shown little tolerance for lack of compliance by employers.

The new initiative expands employment-related immigration enforcement from what are known as "critical infrastructure" workplaces - such as airports, military bases, and petroleum installations - to worksites and employers of all types. In addition, ICE's focus has shifted from administrative fines to criminal charges for managers who knowingly hire or knowingly continue to employ illegal aliens. During the current fiscal year, ICE has arrested more than 2000 people and seized millions in cash and property as a result of worksite enforcement investigations across the country.

What can you do to protect your company?

- Careful and accurate I-9 compliance is more critical than ever. Employers must be certain that the I-9 process is conducted correctly and documented accurately for each new employee.
- Employers should strongly consider an internal I-9 audit - it is much better to discover and correct potential problems BEFORE being visited by ICE.
- At the same time, employers must remain careful to avoid discrimination against employees or applicants because they appear to be immigrants. Employers attempting to comply with Department of Homeland Security requirements can easily slip into unlawful race or national origin discrimination by excluding groups or types of individuals because they seem more likely than others to have suspect immigration credentials.
- Employers should be aware that employment verification requirements may change significantly in the coming months, with increased burdens placed on the employer and significant penalties for non-compliance. Congress has not yet passed any new law, but most immigration reform bills now under consideration carry stiffer rules on verification by employers.

TIP

Employers must achieve a delicate balance: They may not hire or continue to employ any individual not authorized to work in the U.S., but they also may not discriminate based on race or national origin. A careful I-9 process provides employers the best protection available by creating a record of immigration compliance and by giving employers the evidence they need to exclude applicants or employees of various races and national origins who do in fact lack proper work credentials.



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