

INSIDE BUSINESS

Issue Date: Week of March 24 2008, Posted On: 3/21/2008

Stakes get higher

Susan R. Blackman

The Bush administration's tough stance on immigration enforcement increases exposure for employers. On Feb. 22, U.S. Attorney General Michael Mukasey announced an increase in civil fines against employers who violate requirements concerning eligibility to work in the United States. The penalties, which were last adjusted in 1999, are increasing on average 25 percent. The maximum penalty for knowingly employing an unauthorized alien jumps from \$2,200 to \$3,200 per unauthorized employee. For subsequent violations, the maximum civil penalty increases from \$11,000 to \$16,000. Federal enforcement officials may also seek criminal penalties and restitution against employers with widespread violations.

The Department of Homeland Security has continued making headlines with major investigations, raids, arrests and convictions of immigration violators. In the first two weeks of March, federal prosecutors in Norfolk obtained 14-month prison sentences against a Virginia cable contractor and his wife for harboring and employing 14 illegal aliens. The defendants were also ordered to forfeit \$250,000, representing the proceeds of their criminal offenses. On March 17, their son was sentenced to 13 months for his role in the conspiracy to transport and harbor illegal aliens. The defendants must have known they were in trouble when the magistrate judge looked at them during an earlier hearing and said, "You are in deep doo-doo."

In a separate case, U.S. Immigration and Customs Enforcement announced grand jury indictments on March 11 against eight people in Virginia charged with aggravated identity fraud and conspiring to violate federal immigration laws. These charges stem from an investigation of a multistate conspiracy to obtain unlawful state identification cards and sell them to illegal aliens.

ICE recently issued a notice to employers to beware of fraudulent documents presented by new employees during the employment verification process. The process requires every employer in the United States to review documents establishing the identity and work eligibility of each new employee in order to complete an I-9 Form. In a Worksite Enforcement Advisory issued in February, ICE informed employers that they must be vigilant in determining whether the documents appear to be genuine and to relate to the person presenting them.

The advisory notes that many illegal aliens obtain fraudulent documents from a "document mill." ICE cautions employers to be alert to suspicious factors relating to work authorization documents. For example, if an employer notices that all its new employees are presenting documents of identification from the same state or territory, this may warrant further inquiry by the employer. According to the ICE advisory, employers must investigate any factors that suggest the documents are not genuine or do not relate to the individual presenting them.

Similarly, the ICE advisory instructs employers to take action in response to "no-match" letters from the Social Security Administration. When an employer receives such a letter indicating that the SSA records do not match the name and number provided in the employer's wage report, the employer should follow up to verify the information. ICE says, after encouraging the employee to resolve any discrepancies with SSA, the employer should follow up with SSA to ensure that any corrections are valid.

ICE also encourages employers to take additional steps to verify data provided by employees. These optional steps include the Social Security Number Verification System, which is available at www.socialsecurity.gov, and the new online E-Verify program administered by U.S. Citizenship and Immigration Services, which is described at www.dhs.gov/e-verify.

The legal consequences for violating work eligibility laws can affect not only the illegal aliens, but also the employers and managers who hire them. Just ask the human resources director who was arrested in an ICE raid of a Utah factory last month and now faces a potential 10-year sentence and more than \$250,000 in fines.

These enforcement initiatives illustrate that employers should take action now to ensure compliance. This is a good time for employers to audit their own I-9 Forms to make sure they have proper documentation – before ICE shows up for an I-9 inspection or a raid.

Susan R. Blackman is chair of the Business Immigration Practice Group at the law firm of Willcox & Savage PC where she represents employers in immigration and employment law matters. She can be reached at 628-5646 or via e-mail at sblackman@wilsav.com.