



March 4, 2010

Special Immigration Alert:

ICE Expands Worksite Enforcement Activities in the Southeast

On Tuesday, March 2, 2010, the U.S. Department of Homeland Security (“DHS”) announced that it was expanding its worksite enforcement strategy in the Southeastern United States. As part of this strategy, the U.S. Immigration and Customs Enforcement (“ICE”), the agency within DHS directly responsible for worksite enforcement, indicated that it is issuing Notices of Inspections (“NOIs”) to 180 businesses in Tennessee, Alabama, Arkansas, Louisiana and Mississippi. These NOIs alert the businesses that ICE will be inspecting their Form I-9s and seeking to review voluminous other business records, including a list of current and terminated employees with hire and termination dates; the names, social security numbers and dates of birth of all active employees; quarterly wage and hour reports and/or payroll data on all employees covering the period of inspection; quarterly tax statements; all correspondence with the Social Security Administration (including “No-Match” letters); and more! All of this is an effort by ICE to determine whether the businesses are complying with federal employment eligibility verification laws and regulations.

This DHS announcement is the latest in a series of expanding worksite enforcement efforts by the Obama administration. Instead of raids, the Obama administration has focused its efforts on auditing and investigating employers to determine if they are satisfying the Form I-9 requirements and are knowingly or unwittingly employing illegal workers. Hector Chichoni, the Chair of EBG’s Southeastern Immigration Practice, notes: “this action by ICE underscores what the Immigration Law Group at EBG has been advising clients since the Obama administration took office. Businesses need comprehensive employment verification and related compliance plans in place because the civil and potentially criminal consequences of this enforcement strategy can be severe. Businesses that ignore this important aspect of their operations can face substantial fines that make compliance now not only good corporate citizenship, but also good risk management.”

CLIENT ALERT

These ICE inspections are one of the most powerful tools the federal government has to enforce employment and immigration laws. The fines for simple Form I-9 violations range from \$110 to \$1,100 per violation, with the higher range applicable to employers with a higher percentage of mistakes. Employers with large workforces that fail to properly manage the Form I-9 process can face fines of hundreds, or even millions, of dollars. Employers and their managers also can face criminal prosecution if they deliberately neglect their legal responsibilities in this area. This latest ICE action in the Southeast underscores the need for all businesses to review this important aspect of their operations, develop compliance plans that will protect them from this potential liability and have in place crisis management procedures, including access to outside counsel that specializes in this area, in the event that the “ICEman” cometh!

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