

Akerman Practice Update

LABOR AND EMPLOYMENT

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Stricter Enforcement of I-9 Verification Procedures Underway

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Earlier this month the U.S. Immigration and Customs Enforcement (ICE) announced that it would be taking a more aggressive and proactive approach in its I-9 verification procedures. ICE has started by issuing Notices of Inspection (NOIs) to 652 businesses in order to audit I-9 records that contain information regarding an employee's right to work legally in the U.S.

ICE stated that these 652 companies were targeted as the result of information received from a variety of sources indicating the companies may not be in compliance with the requirements that all employees provide proper documentation of their legal right to work in the United States and as part of the agency's initiative to focus "... its resources on the auditing and investigation of employers suspected of cultivating illegal workplaces by knowingly employing illegal workers." So, while ICE will devote more resources to auditing companies, more resources will also be devoted to following-up on complaints by disgruntled employees (or recently terminated employees) that complain about the company's hiring practices of ethnic individuals, especially in organizations where multiple relatives and friends with similar ethnicities are employed. Accordingly, companies with an ethnically diverse workforce should review their verification procedures and paperwork to ensure compliance with the I-9 process.

The I-9 regulations have existed since 1986, when the Immigration Reform and Control Act ("IRCA") was passed. IRCA requires that all employers confirm that employees hired after November 6, 1986, are legally authorized to work in the United States. All U.S. employers must complete and retain a Form I-9 for each individual they hire for employment in the United States within 3 days of starting employment. This includes citizens and non-citizens. Note: There is also a

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Spanish version of Form I-9, which may be filled out by employers and employees in Puerto Rico ONLY. On the form, the employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9. The list of acceptable documents can be found on the last page of the I-9 form.

All completed I-9 forms must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. The form must be available for inspection by authorized U.S. Government officials (e.g., Department of Homeland Security, Department of Labor, Office of Special Counsel). During an audit, ICE demands the employer produce I-9s within three days, which in many cases is not sufficient time for an employer to review and correct any deficiencies. Sources in the immigration field and in the Department of Homeland Security have indicated that with the Obama administration looking to tackle comprehensive immigration reform at the end of the year, audits and increased enforcement may become more common. Thus, employers should be proactive and conduct internal self-audits to ensure that meaningful immigration compliance practices are in place.

Self audits often uncover potential liability in related areas such as identity theft, use of fraudulent documents, careless completion of I-9 forms and -- most importantly -- evidence of the knowing hire or the continued employment of unauthorized workers. Because violations of IRCA are punishable by fines and other more severe enforcement and compliance consequences, it is better for employers to identify and correct their practices before ICE conducts a formal audit.

The Akerman Immigration Planning and Compliance attorneys provide assistance to US companies in all facets of the international assignment process. The immigration team represents the interests of multinational, foreign, and domestic companies and individual business persons before the Department of Homeland Security, United States Citizenship and Immigration Services, United States Customs and Border Protection, Immigration and Customs Enforcement, the U.S. Department of Labor, and The Department of State and its U.S. consulates worldwide

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