GCs Prepare for Increased Immigration Law Enforcement

In-House News:

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By Jen Woods

Companies that employ illegal immigrants are increasingly facing fines and criminal charges. Last year, the U.S. Department of Homeland Security (DHS) announced the Secure Border Initiative, which calls for "more robust worksite enforcement."

The government's vow to crack down on companies that do not comply with immigration laws comes after 20 years of minimal enforcement. In fact, the Immigration and Naturalization Service, which has since merged with DHS, scaled back worksite enforcement operations by 95% between 1999 and 2003.

Now, more and more employers are facing criminal felony charges for crimes such as fraud, harboring and transporting illegal aliens, and money laundering. The government is also threatening violators with enormous fines and forfeitures of company assets.

However, corporate counsel can plan ahead to help their organizations avoid or respond to government investigations. Companies should ensure full compliance with the proposed government-mandated Employment Eligibility Verification System (EEVS), address Social Security "mismatch letters," and consider participating in the new Immigration and Customs Enforcement Mutual

Agreement between Government and Employers (IMAGE) self-policing program.

Participation in the current EEV program, known as Basic Pilot, is voluntary. About 10,000 employers use the Internet-based system. Congress is considering a bill that would make compliance with the EEV program mandatory for all seven million U.S. employers.

The regulations proposed in the pending bill would also require all employers to verify the Social Security numbers (SSNs) of all new employees. This requirement would apply to for-profit and nonprofit recruiters, temporary agencies, labor contractors, job search websites, day labor sites, and job placement or referral organizations.

Two years after the bill is enacted, organizations must begin verifying the Social Security numbers of all new hires. Three years after enactment, the Social Security numbers of all current state, federal, and local government employees, as well as workers in critical infrastructures such as military bases and nuclear energy sites, would have to be verified. Six years after enactment, EEVS compliance would be mandatory for all employers in the United States. Congress supports the bill, and it is expected to become law.

The system, however, still has a few glitches that need to be worked out. In June, the Society for Human Resource Management estimated that Basic Pilot has a success rate of about 85% for initial verification requests. System errors could potentially damage a company's productivity, as new hires spend weeks fixing database mistakes.

Also, mandatory EEVS compliance would be costly for large employers that have high turnover rates because they will need to hire and train new staff to handle SSN verification.

Corporate counsel should also establish protocol for logging mismatch letters. The Social Security Administration (SSA) sends a mismatch letter to an employer when an employee's name and SSN do not match SSA records. Employers with large numbers of SSN mismatches are subject to Immigration and Customs Enforcement (ICE) audits and criminal investigations.

The Safe Harbor Rule, proposed by ICE, would require employers to check their records for errors within 14 days of receiving mismatch letters. If a company has no record of a mistake, it must resolve the error within 60 days.

If the discrepancy is not resolved within the time frame allotted by the Safe Harbor Rule, the employer is given three additional days to complete new paperwork or terminate the employee. If the employer follows the procedure and it is determined that the employee is an unauthorized worker, the employer is not considered to have had "constructive knowledge" of the fact.

In July, ICE introduced the IMAGE program, which allows employers to police themselves. Employers that participate in the program will implement a series of practices, which include using Basic Pilot, training staff to conduct SSN verification, developing protocol for handling SSA mismatches, establishing tip lines for employees to report unauthorized hiring, and self-reporting violations to ICE. In addition, employers in the program agree to semiannual ICE audits.

These new immigration compliance programs are still in developmental

phases. However, corporate counsel should be prepared for the government's increased enforcement of workplace immigration laws.

On the Net

U.S. Department of Homeland Security
www.dhs.gov/index.shtm

U.S. Immigration and Customs Enforcement
www.ice.gov

U.S. Social Security Administration
www.socialsecurity.gov