

New Focus on Immigration and Tax Criminal Prosecution: Employer I-9 Compliance More Imperative Than Ever

By Elise S. Levasseur

Introduction

The business climate for U.S. employers is undeniably difficult in the current economic downturn and globally competitive economy. Added to employers' other concerns is a political environment in which they now find themselves targeted by the U.S. government and others seeking increased enforcement of the nation's immigration and tax laws. Since 2006, there has been a substantial increase in the number of news announcements or listings on various U.S. government Web sites of agency enforcement activities against employers. These announcements and listings reflect successes in securing millions of dollars in fines, the expedited deportation of undocumented workers, and a significantly higher rate of prosecutions and convictions.¹ Almost daily, there is a fresh news report, complete with photographs, of hundreds of illegal workers being led away in handcuffs, of raids on a U.S. businesses, and/or criminal indictments of employers, including many mid-level managers and supervisors.²

Employers are not only being pursued under a panoply of federal government enforcement tools but are also being tested in Racketeer Influenced and Corrupt Organizations Act (RICO)³ civil suits. In addition, they must be increasingly aware of a growing number of states that have enacted their own legislation requiring compliance with U.S. immigration laws and that may provide for an additional layer of fines, or the denial of state-issued licenses or benefits.⁴

Employers must also be aware of situations in which knowledge of the employment of undocumented workers may be found to exist because of the use of separate contractors. Under the Immigration Reform and Control Act of 1986 (IRCA),⁵ an employer is not required to complete a Form I-9, Employment Verification Form, for employees contracted to work at the employer's site by another employer; however, business enti-

ties should have in place proper procedures to determine whether contractors are in compliance with I-9 verification requirements. An employer cannot avoid liability under the IRCA by employing foreign nationals through an employee contractor arrangement while knowing that the workers of the contractor are unlawful workers.⁶

In the past, employers may have received letters from the Social Security Administration (SSA) stating that the Social Security Number (SSN) reported by the employer does not match the name it provided, or there is no such social security number in existence with few guidelines on how to use the information. Under new final regulations issued by the U.S. Department of Homeland Security (DHS) on August 15, 2007, an employer may be deemed to have constructive knowledge of its employment of undocumented aliens where the employer has received a "no-match" letter from the SSA. Where an employer receives a "no-match" letter and does not follow guidance given by the Immigration Control and Enforcement (ICE) branch of the U.S. Department of Homeland Security on how to achieve a "safe-harbor" against prosecution, an employer may be found to have constructive knowledge of the employment or ongoing employment of an undocumented worker who first had employment authorization but has later fallen out of status.⁷

Not surprisingly, employers have increasingly sought counsel on how best to avoid government and civil actions, and on how to mitigate their exposure to liability after a raid, government audit, or other government action. Employers may also have questions about whether to enroll in various U.S. government programs (such as E-Verify⁸ or IMAGE⁹) that purportedly designed to assist U.S. employers in their compliance with U.S. law, but which may pose significant risks if they *do* participate. Risks associated

with E-Verify or IMAGE include discriminating against U.S. workers who, through some glitch in government databases, are not able to verify their citizenship or immigrant status, and providing evidence to the U.S. that the employer has violated U.S. law, which could be used against the employer in a criminal action.

Examples of Government Enforcement Efforts Through ICE Raids

Since April 2006, there have been numerous examples of raids on U.S. businesses and arrests, which include the following:

- **El Pollo Rico Restaurant** – On July 24, 2008, the co-owner of El Pollo Rico Restaurant in Wheaton, Maryland, Francisco C. Solano, pleaded guilty to conspiracy to harbor aliens, conspiracy to commit money laundering, and structuring bank transactions to evade reporting requirements in connection with the operation of the restaurant. His wife also pleaded guilty to conspiracy to commit money laundering. Both defendants face a maximum of 20 years in prison for the money laundering charge. In addition, Francisco Solano faces a maximum sentence of 10 years in prison for the harboring conspiracy and five years in prison for structuring transactions to evade reporting requirements.
- **Action Rags USA** – The owner of Houston-based Action Rags USA and two managers were indicted July 31, 2008, on various charges of violating federal immigration laws. All defendants were charged with conspiracy to harbor illegal aliens and to induce illegal aliens to come to the United States. The defendants were also charged with inducing aliens to enter the United States for commercial advantage and ICE agents administratively arrested more than 150 illegal aliens, most from Mexico, who were discovered working at the plant.
- **Agriprocessors, Inc.** – ICE agents executed criminal and administrative search warrants on May 12, 2008 in Postville, Iowa, arresting 389 illegal aliens. According to the ICE, this was the largest number of illegal aliens ever arrested in a single-site worksite enforcement operation. Ultimately, 305

of those arrested were also convicted of criminal offenses including identity theft, false use of a Social Security number, illegal re-entry into the United States. Two Agriprocessors supervisors were arrested July 3, 2008 and charged with crimes that included aiding and abetting aggravated identity theft and encouraging aliens to reside illegally in the United States. In August 2008, one of those supervisors pleaded guilty to charges of conspiracy to hire illegal aliens and one count of aiding and abetting the hiring of illegal aliens.

- **Swift & Company** – On Dec. 12, 2006, 1,297 illegal aliens were arrested at six Swift meat-processing facilities in six states. A 10-month investigation into work-related identity theft culminated in search warrants executed at Swift facilities in Greeley, Colorado; Grand Island, Nebraska; Cactus, Texas; Hyrum, Utah; Marshalltown, Iowa; and Worthington, Minnesota. All 1,297 undocumented workers were charged as immigration status violators; 274 were also charged with criminal offenses. On July 10, 2007, ICE arrested an additional 20 employees upon executing federal and state warrants in six states. Those arrests included United Food and Commercial Workers (UFCW) union official Braulio Pereyra-Gabino, who was convicted by jury May 8, 2008 of harboring illegal aliens and sentenced to a year in federal prison. A Swift human resources employee has also pleaded guilty to illegal alien harboring.
- **Rosenbaum-Cunningham International (RCI)** – On March 3, 2008, three former top executives of RCI, a Florida-based janitorial services contractor, were given prison sentences ranging from 30 to 120 months for their roles in defrauding the United States and harboring illegal aliens. Each was also required to pay more than \$15 million in restitution to the U.S. Department of the Treasury. The three operated a cleaning and grounds-maintenance service that was staffed predominantly with illegal aliens. The three contracted with theme restaurant chains and hospitality venues throughout the United States. By failing to collect and pay federal income, Social Security, Medicare and federal employment taxes on

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wages it paid, according to ICE, RCI was able to evade paying millions of dollars in employment taxes. RCI clients included House of Blues, Planet Hollywood, Hard Rock Café, Dave and Busters, Yardhouse, ESPN Zone, and China Grill. As part of the investigation, ICE agents also arrested 196 illegal aliens at more than 64 locations in 18 states and the District of Columbia.

- **Robert and Angelita Farrell** — The married owners of a Comfort Inn & Suites hotel in Oacoma, South Dakota were sentenced February 22, 2008, to several years in prison each after a federal jury found them guilty of peonage (involuntary servitude), visa fraud, making false statements, and conspiracy.
- **Quality Service Integrity, Inc. (QSI)** — Sixty-three illegal aliens were arrested in April of 2007 at a Cargill pork processing plant in Beardstown, Illinois. They were employed by QSI, which provides cleaning and sanitation services for Cargill. Sixteen of those arrested, including two supervisors, were convicted in federal court of visa fraud and received prison sentences. In addition, the QSI plant manager, Gerardo Dominguez-Chacon, was convicted of harboring illegal aliens and aggravated identity theft and was sentenced to 38 months in federal prison. QSI's human resources manager, Maria del Pilar Marroquin de Ramirez, was also convicted of illegal alien harboring and sentenced to ten months in prison. All 63 of those arrested either have been placed in removal proceedings or will be after serving their sentences.
- **Tarrasco Steel** — Seventy-seven illegal aliens working on "critical infrastructure" construction projects in four southern states were arrested March 29, 2007, following a five-month ICE investigation. Many of those arrested worked for Greenville, Mississippi based Tarrasco Steel, owned by Jose S. Gonzalez. Gonzalez allegedly falsified and altered information on I-9 Employment Eligibility Verification forms.
- **Michael Bianco, Inc. (MBI)** — On March 6, 2007, New Bedford, Massachusetts textile product company owner Francesco Insolia and three other managers were arrested and charged with conspiring to encourage or induce illegal aliens to reside in the United States and conspiring to hire illegal aliens. Another person was charged with transferring fraudulent identification documents. Approximately 320 illegal workers were arrested on administrative charges as part of the operation, representing more than half of the company's workforce. Insolia and other MBI employees working on his behalf allegedly hired illegal aliens to fill an expanding workforce. The company's customers included the U.S. Department of Defense. The company allegedly was aware that many employees used fraudulent "green cards" and Social Security cards to obtain employment. MBI management also allegedly told prospective employees how to obtain fraudulent documents.
- **IFCO Systems North America** — ICE agents arrested 1,187 illegal alien employees of Houston-based IFCO Systems North America at more than 40 locations nationwide on April 19, 2006. Seven IFCO managers were also criminally charged with crimes including, knowingly hiring illegal aliens, transporting and harboring illegal aliens, and conspiring to transport illegal aliens. All seven have pleaded guilty and are awaiting sentencing. Five additional IFCO managers were indicted in February of 2008 for similar crimes and are awaiting trial.¹⁰

Government Enforcement Tool Box

The key enforcement tool in the government's arsenal has been the Immigration Reform and Control Act of 1986 (IRCA),¹¹ which was enacted by Congress in 1986 to attempt to stop the flow of illegal immigrants to the U.S. by removing the incentive for illegal entries, that is employment in the U.S. Under IRCA, U.S. employers are prohibited from knowingly hiring¹² or continuing to employ an unauthorized alien,¹³ and they carry the burden of immigration law enforcement to screen their employees to ensure that only those with work authorization are employed in the U.S.¹⁴ The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended some provisions of IRCA by providing employees with some "good faith" defenses against technical paperwork violations, reducing some of the acceptable documents for completion of Form I-9 and

by providing some protection for certain employers who are part of multi-employer associations. It should also be noted that INA 274A(b)(6) does not provide an employer with a good faith defense where the employer has engaged in a pattern of violation of U.S. law.¹⁵

Because IRCA has had limited success since its enactment, and because the Bush Administration has worked to push forward its agenda for a "Guest Worker" program while at the same time understanding the current anti-immigration sentiment in the U.S.,¹⁶ the Administration authorized in 2005 the criminal prosecution of employers through a panoply of enforcement tools primarily used by the Immigration Control and Enforcement (ICE) Branch of the Department of Homeland Security (DHS) In 2005, DHS authorized ICE to implement the Secure Border Initiative (SBI), and to work cooperatively with the Internal Revenue Service (IRS) to bring criminal tax prosecutions.¹⁷

As stated, the DHS has since April 2006 increased its enforcement efforts by focusing on criminal prosecution of employers who violate IRCA rather than on the civil and monetary penalties utilized from 1986 to 2006, and the IRS has initiated similar criminal actions against employers for money laundering as well as for failure to withhold and pay taxes. Until 2006, the U.S. government focused on the use of civil penalties, which ranged from \$110.00 to \$1,000 per employee for so-called "paperwork" violations.¹⁸ Under some previous and current government practices, maximum fines assessed for *knowingly* hiring an unauthorized worker in the U.S. reached \$16,000 per worker, and there is a potential danger of receiving up to six months in jail where the government could/can establish a "pattern or practice" of knowingly employing or continuing to employ unauthorized workers."¹⁹

Violations that may give rise to U.S. Government enforcement actions include:

- Harboring Illegal Aliens: a felony offense with sentencing potential of 5 years imprisonment (8 USC § 1324).
- Money laundering: a felony with a sentencing potential of 20 years imprisonment (18 USC § 1956).
- Unlawful Employment of Aliens: a felony offense with sentencing potential of 6 months imprisonment (8 USC § 132(a)).

- False Statement: a felony offense with sentencing potential of 5 years imprisonment (8 USC § 1001).
- Identification Document Fraud: a felony offense with sentencing potential of 15 years imprisonment (8 USC § 1028).
- Aggravated Identity Theft: a felony offense with sentencing potential of 15 years imprisonment (8 USC § 1028(a)).
- False Social Security Number: a felony offense with sentencing potential of 5 years imprisonment (42 USC § 408).

Primary Basis of Prosecution: Knowingly Hiring or Continuing to Employ an Unauthorized Worker

It is very important to understand that under IRCA an employer may not need to have actual knowledge that it is knowingly employing or continuing to employ an undocumented worker for the government to prosecute. Key in the government prosecutorial strategies has been to find that the employer had "constructive" knowledge of the unlawful employment of undocumented workers.

Constructive knowledge is defined under the United States Citizenship and Immigration Services (USCIS) regulations as knowledge that may fairly be inferred through notice of certain facts and circumstances that would lead a person, through the exercise of reasonable care, to know about a certain condition,²⁰ and it imposes on employers an obligation to complete, maintain, and update a Form I-9 Employment Verification Form.²¹ Under the Immigration and Nationality Act, (INA), as amended, there is a rebuttable presumption of constructive knowledge if the employer 1) fails to complete or improperly completes the Form I-9; 2) fails to take reasonable steps after receiving information that the worker is not authorized to work; 3) acts with reckless or wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into its workforce or to act in its behalf; or 4) fails to take reasonable steps after receiving information indicating that the employee may be an alien who is not employment authorized such as, a) the employee requests that the employer file a labor certification or employment based visa petition on behalf of the employee, b) written notice to the employer from the SSA reporting earnings on a W-2 that employee's name and corresponding SSN fails to match SSA records, c) written notice from the DHS that immigration

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documents presented by the employee in completing Form I-9 are assigned to another person or there is no agency record that the documents have been assigned to any person.²² Examples of situations where constructive knowledge has been found include *INS vs China Wok Restaurant*²³ (constructive knowledge can include situations where an employer has completed an I-9 that reveals information that the foreign national is out-of-status but the employer fails to reverify employment authorization) and *United States v Carter*²⁴ (constructive knowledge can also arise from allowing poorly trained employees to complete I-9 forms).

A review of the activities of ICE and other government agencies demonstrates that ICE has primarily focused on the most egregious employer violations, which are the harboring and smuggling of unlawful workers. Under U.S. law, employers are subject to prosecution for transporting an undocumented alien to further his or her unlawful presence; for concealing, harboring, or shielding an undocumented alien; or for inducing or encouraging an undocumented alien to illegally enter the United States.²⁵ Under *United States v King*,²⁶ harboring a foreign national may be found where the employer has engaged in additional acts other than mere employment that help an undocumented alien to further his or her unlawful employment, such as procuring false documents, providing a warning about a future inspection, and/or providing housing to the undocumented alien.

If there is no harboring involved, an employer who knowingly hires at least ten workers, and who has actual knowledge of unlawful employment can be fined and imprisoned up to five years.²⁷ Where the harboring is done for the purpose of commercial gain or private financial advantage, the maximum prison term increases from five to ten years.²⁸

Employer Requirements Under IRCA

A review of an employer's requirements under IRCA is helpful for understanding potential employer liability and illustrating the primary means by which the employer can avoid liability and criminal prosecution. IRCA requires that all employers complete a Form I-9 if the employee was hired on or after November 6, 1986,²⁹ and that in doing so, that the employer cannot discriminate against U.S. workers on the basis of national origin or

citizenship.³⁰ Proper and non-discriminatory completion of an I-9 is critical for the reason that an employer who properly completed I-9 records can use affirmative defenses available to employers under IRCA.³¹

A Form I-9 has three sections. Section 1 of an I-9 must be completed and signed by the hiree on the date of hire and requires assertion by the hiree of his or her legal status in the United States. That is, the hiree must indicate that he or she is a U.S. citizen, lawful permanent resident, or nonimmigrant alien with work authorization.³² Although it is the employee who makes the assertion about his or her immigration or citizenship status, it is the employer who is responsible for assuring that Section 1 is completed by the employee on the first day of hire.

Section 2 is completed by the employer and requires that the employer attest that it has examined original documents presented by the hiree, which are from a list of acceptable documents (listed on the reverse side of Form I-9) that demonstrate identity and the right to work in the United States.³³ Examination of the employees' original documents must be completed within three days of hire.

Section 3 of Form I-9 is completed only when information provided by the employee indicates that there will be a need to re-verify his or her employment authorization. There are three circumstances under which an employer must re-verify employment authorization: a) when an employee presents a receipt for a document that must be reverified within 90 days; b) when the employee's employment authorization document expires; or c) when the employer receives a letter from a U.S. government agency informing the employer that the employee is not authorized to work in the United States.³⁴

E-Verify and IMAGE Not Necessarily a Safe Harbor for Employers

Unlike the proposed DHS regulations concerning "no-match" letters from the SSA that provide for a "safe-harbor" for employers who follow a complex set of protocols for following up on the "no-match" letter, new government programs such as E-Verify and IMAGE do not provide a "safe-harbor" for those employers who participate. Information that the employer provides to the government concerning its past and current hiring practices may be used against the employer in criminal or civil prosecution.

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What is the benefit of participating in the new programs? According to ICE, by voluntarily participating in the IMAGE programs, companies can reduce unauthorized employment as well as the use of fraudulent identity documents. As part of IMAGE, ICE and the USCIS will provide education and training on proper hiring procedures, fraudulent document detection, use of the E-Verify employment eligibility verification program and anti-discrimination procedures.³⁵ To participate in IMAGE, employers must agree to the following:

- 1) Complete a self-assessment questionnaire;
- 2) Enroll in E-Verify;
- 3) Enroll in Social Security Number Verification Service;
- 4) Adhere to IMAGE Best Employment Practices;
- 5) Undergo an I-9 audit conducted by ICE; and,
- 6) Review and sign an official IMAGE partnership agreement with ICE.

After enrollment and commitment to DHS's best hiring practices, program participants will be deemed "IMAGE Certified," which ICE believes will become an industry standard.³⁶ This author believes that the best time to advise an employer to enroll in IMAGE is after the employer has been audited or raided by ICE so that the employer acquires no new liability by its participation in IMAGE.

Implementation or Reexamination of Employer I-9 Compliance Program

Because ICE has made it clear that all employers are at risk regardless of their size or their particular industry, it has become imperative that all employers have in place a comprehensive I-9 compliance program to avoid criminal prosecutions for employing undocumented workers.³⁷ In this author's opinion, currently the most effective and safest defense against prosecution and civil suits under RICO is ensuring that the employer has a written compliance program for employment verification and that its I-9 forms are completed correctly and on a timely basis. A written compliance program is also critical in helping employers avoid possible national origin and citizenship discrimination from engaging in unfair immigration hiring related practices.

The following is a list of suggested employer practices:

A. Every employer should have a written policy explicitly prohibiting discrimination against U.S. workers and explicitly prohibiting the hiring of illegal workers. The policy should be reviewed with every person who has hiring authority and every person in the employer's human resources department who is responsible for asking employees to complete an I-9 Form. The presence of an overall corporate compliance policy tends to demonstrate an employer's good faith and may mitigate any penalties assessed by either ICE or the Office of Special Counsel for unfair Immigration related hiring practices.

B. Every employer should prominently display notices to its employees that it explicitly prohibits discrimination against U.S. workers and explicitly prohibits the hiring of workers not authorized to work in the United States.

C. Every employer should conduct an audit of its Forms I-9 on an annual basis to assure that it is in compliance with U.S. law.

D. Every employer should designate a key individual who is responsible for the business entity's overall employment eligibility verification program and who will explain the policy to personnel handling the daily obligations of completing I-9s on a timely basis, as well as those who will be involved in the annual internal audit. The individual responsible for the overall program must ensure that key personnel receive adequate training on how to properly complete I-9s, how to conduct an audit, and how to legally correct and replace missing I-9s without engaging in unfair immigration related hiring practices.

E. Every employer should ensure that employees fully and properly complete Section 1 of the form on or before the date of hire.

F. Every employer should examine only original documents presented by each employee at the time employment begins to ensure that they appear to be genuine and related to the person presenting them and that the documents

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are either from List A or List B and List C of the reverse side of the Form I-9.

G. Every employer should fully and properly complete Section 2 of the I-9 and attest that the employer has inspected the documents and, to the best of his or her knowledge, the employee is authorized to work in the United States.

H. Every employer should establish a tickler system to reverify the employment authorization document if the employee indicates that employment authorization will expire in the future.

I. Every employer must take reasonable steps to resolve social security "no match" letters. With the looming implementation of the DHS's social security no match regulations, employers must take care not to acquire constructive knowledge of continuing to employ an undocumented alien.

J. Every employer should separate Forms I-9 from other personnel files, which will permit easy and quick access for internal audit or government audit purposes.

K. Every employer should understand the retention requirements for I-9 forms and should establish a system for disposing of I-9 forms for employees who have been terminated. Employers should retain I-9s for every current employee. For terminated employees, I-9s must be retained for three years from the date of hire or one year from the date of termination, whichever is longer.

L. Every employer using contract employees must establish written procedures to assure that contractors are in compliance with I-9 employment verification provisions. Contracts between employers and contractors should contain language that I-9 compliance is the responsibility of the contractor. Contracts should contain indemnification against liability for improperly completed I-9s.

Common Errors Found When Auditing Forms I-9

The following are common mistakes found when conducting an internal I-9 audit that must be corrected for an employer to demonstrate that it has acted in good faith in its

continuing obligation to remain in compliance with IRCA.

In Section 1 the Employer:

- Did not complete the I-9 on the date of hire;
- Did not sign and/or date the form;
- Did not attest to his or her status in one of the three boxes provided: U.S. citizen, lawful permanent resident or nonimmigrant with work authorization which expires;
- Did not indicate a date on which employment authorization expires if the employee indicates a date of employment authorization expiration and either an alien registration or admission number;
- If a lawful permanent resident, did not indicate an alien registration number;
- Did not indicate a maiden name or stated "none" or "N/A."

In Section 2 the Employer:

- Did not sign and/or date the I-9;
- Did not indicate the date of hire;
- Did not examine original documents within 3 days of hire;
- Accepted documents that were not on either List A or from List B or C;
- Over-documented the I-9 with documents from List A and from List B or C;
- Did not provide the name and address of the company;
- Did not provide the employee's job title;
- Photocopied the documents but did not complete the I-9;
- Did not provide the name of the document issuing authority;
- Did not provide the expiration date of the document, if applicable;
- Accepted expired documents where not permitted;
- Did not follow up on documents for which the employee provided a receipt within 90 days;

In Section 3 the Employer:

- Did not reverify employment authorization or document where a receipt for a document was provided; or the U.S. government notified the employer that the information provided by either the employer or the employee is inaccurate;

- Information concerning the document was not provided, including the expiration date of the new document, if applicable;
- Did not sign Section 3.

Best Practices for Correcting Errors on Forms I-9 Discovered During Internal Company Audit

- Obtain a complete list of all employees listed on Employer's payroll;
- Determine if there is an I-9 for each current employee;
- Determine whether there are employees who are no longer with the company for whom an I-9 should have been completed and that the employer should have retained subject to the USCIS retention schedule (one year from the date of hire or three years from the date of termination, whichever is longer);
- Determine whether all boxes on the form have been completed;
- Complete or have the employee complete missing information on the form, but be sure that the information is not back-dated when corrected; initial and date the corrections made as of the date of the correction;
- Consider using a different color ink to make the corrections;
- Have employer corrections made by the individual at the company who originally completed Section 2 or Section 3, if available;
- Use caution when approaching employees to provide documentation not originally provided. Do not specify which document the employee can provide if a document is missing;
- Do not destroy an existing I-9 if it is required under the law. Annotate, initial, and date the form or consider attaching a new I-9 form to the existing I-9 form, but do not destroy an existing I-9 for a current employee.
- Separate I-9s from other employee records;
- Separate I-9s from terminated employees and indicate the date the I-9 can be destroyed according to USCIS retention schedule.

Conclusion

At this writing, it is likely that the activity by ICE enforcing U.S. immigration laws against employers will continue for the next several years. The best defense is to return to the fundamentals of compliance with nondiscriminatory I-9 compliance and to put into place written compliance policies that confirm the employer's adherence to the law, its prohibition against discrimination, and its commitment to ongoing internal audits of its records and policies. Further, the use of E-Verify and IMAGE should be considered going forward to assure that the employer is engaged in using best practices in compliance with IRCA.

NOTES

1. Fact Sheet: "Frequently Asked Questions About Worksite Enforcement," www.ice.gov/pi/news/factsheets/worksite.htm (8-12-2008), pp 1-2.
2. "ICE executes federal search warrant at Palm Springs bakery in ongoing probe-current and former manager charged criminally: 51 workers arrested on immigration violations;(September 10, 2008); www.ice.gov/0809/080910/pi/nr/0809/08091/palmsprings/htm; and, "Ice arrests 21 illegal aliens in worksite probe targeting three Asian restaurants: Enforcement is part of ongoing ICE investigation (September 18, 2008); www.ice.gov/oi/nr/0809/080918sacrametnto.htm.
3. 18 USC 1961-68.
4. For example, Colo. Rev Stat 8-17.5-101, 8017.5-102. Under Colorado law, companies contracting with the State must use E-Verify.
5. Pub. L. No. 99-603, 100 Stat. 3359.
6. INA 274A(a)(4).
7. 72 Fed. Reg. 45611 (August 15, 2007). On October 10, 2007, a U.S. District Court enjoined the implementation of the final rule. See Order Granting Motion for Preliminary Injunction, AFL-CIO v. Chertoff, No. 07-4472 (ND Cal October 10, 2007), and the subsequently granted the DHS's request for stay until March 24, 2008. See Motion to Stay Proceedings Pending New Rulemaking, ALF-CIO v. Chertoff, No. 074472 (ND Cal November 23, 2007, and on March 26, 2008, the DSH published a No-Match Supplemental Proposed Rule for which public comments were due April 25, 2008, and which as of this date, has not become a final rule. See 73 Fed. Reg. 59 (March 26, 2008).
8. E-Verify is an Internet-based system operated by U.S. Citizenship and Immigration Services (USCIS) in partnership with the Social Security Administration (SSA). E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. See www.uscis.gov/portal/site/uscis/menuitem. E-Verify is only available for new hires and must be conducted within three (3) days of hire, except in the case of federal contractor employers.
9. On July 26, 2006, the DHS announced a new initiative and best practices. According to the DHS, the IMAGE program is to help employers ensure they are building a legal workforce through voluntary partnerships within the government called the ICE

Mutual Agreement between Government and Employers (IMAGE). See *DHS Highlights Best Practices for Maintaining Legal Workforces*, www.dhs.gov/xnews/releases/press_release_9066.shtm, July 26, 2006.

10. Fact Sheets, "Worksite Enforcement," www.ice.gov/pi/news/factsheets/worksite_cases.htm (August 25, 2008).

11. Pub. L. No. 99-603, 100 Stat. 3359.

12. INA 274(a)(1)(B).

13. INA 274A(a)(1)(A).

14. INA 274A(b).

15. 8 CFR 274a.1(k).

16. June Kronholz, Administration Renews Campaign for Guest Workers, *Wall Street Journal*, October 19, 2005, B2.

17. The Secure Border Initiative (SBI) was unveiled November 2, 2005 by Department of Homeland Security: (DHS) Secretary Michael Chertoff. It was announced by DHS that the purpose of this multi-year plan was to attempt to secure U.S. borders, and to reduce illegal migration. See Fact Sheet: Secure Border Initiative, Release (11/02/2005); www.dhs.gov/xnews/releases/press_release_0794.shtm.

18. 8 CFR 274a.10(b)(1)(ii)(C). Paperwork violations, although less serious than knowingly hiring or continuing to employ undocumented aliens, can be assessed regardless of whether the individual involved is a lawful U.S. worker.

19. 8 CFR 274a.10(b)(2).

20. 8 CFR 274a.1(l)(1).

21. 8 CFR 274a.2(b)(1)(i)(A).

22. 8 CFR 274a.1(l)(1).

23. 40 OCAHO 608, OCAHO Case No. 93A000103 (Feb 10, 1994).

24. 7 OCAHO 931, OCAHO Case No. 95A00164 (May 9, 1997).

25. U.S. INA 274(a); 8 USC 1324(a).

26. 193, F 3d 567 (2nd Cir. 1999).

27. INA 274(a)(1)(B)(ii).

28. INA 274 (a)(1)(B)(i); 8 USC 1324(a)(1)(B)(i).

29. INA 274A(b)(6)(A); 8 USC § 2314a(b)(6)(A).

30. *Id.*

31. INA 274A(a)(s).

32. 8 CFR 274a.2(b)(1)(i)(B).

33. 8 CFR 274a.2(b)(1)(i)(A).

34. 8 CFR 274a.2(b)(l)(vi).

35. IMAGE, ICE Mutual Agreement Between Government and Employers, www.ice.gov/parters/opaimage/ (September 5, 2008).

36. *Id.*

37. "Worksite enforcement actions target a key component of the illicit support structure that enables illegal immigration to flourish. No employer, regardless of industry or location is immune from complying with the nation's laws. ICE and our law enforcement partners will continue to bring all of our authorities to bear in this fight using criminal charges, asset seizures, administrative arrests and deportations," Julie L. Myers, Assistant Secretary for Homeland Security U.S. Immigration and Customs Enforcement, www.ice.gov/pi/news/factsheets/worksite_cases.htm (August 25, 2008).



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bachelor's degree by virtue of work experience, companies encountering INS resistance to the entry to the United States of Canadian or Mexican citizens under the North American Free Trade Agreement, and major corporations seeking entry of specialized knowledge, managerial, and executive-level foreign personnel. Ms. Levasseur is a past chairperson of the Immigration Committee of the International Section of the State Bar of Michigan. She is past education chairperson and past vice chairperson of the Michigan Chapter of the American Immigration Lawyers Association (AILA), as well as past cochairperson of its INS Liaison Committee. Ms. Levasseur was selected as one of the 2009 Best Lawyers in America and as a 2009 Super Lawyer, she is a frequent lecturer on business immigration topics with the American Society of Employers, the American Payroll Society, State Bar of Michigan Members, and AILA Michigan Chapter Members.