TINDALL & FOSTER, P.C.
IMMIGRATION, EMIGRATION & RELATED INTERNATIONAL LAW

IMMIGRATION BULLETIN

Friday, August 10, 2007

U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) ANNOUNCES INCREASED WORKSITE ENFORCEMENT PROVISIONS

Today, Friday, August 10, 2007, the U.S. Department of Homeland Security (DHS) Secretary Michael Chertoff and U.S. Department of Commerce Secretary Carlos Gutierrez announced a series of reforms that the Administration will pursue to address worksite enforcement, border security, and other immigration-related issues. The provisions may be divided into four principal approaches for strengthening worksite enforcement.

First, DHS issued a final rule relating to the unlawful hiring or continued employment of unauthorized aliens. The final rule outlines the legal obligations of an employer upon receipt of either;

(A) a "No-Match Letter" from the Social Security Administration; or,

(B) written notification from DHS that the immigration status or employment authorization document presented or referenced by the employee in completing Form I-9 was not assigned to that employee.

The regulation also provides a "safe-harbor" procedure that an employer can follow in response to such a letter to ensure that DHS will not use the issuance of such a letter to conclude that the employer had constructive (i.e. implied or inferred) knowledge that it was employing an alien not authorized to work in the United States. The "safe-harbor" procedure includes attempting to resolve the inconsistency, and if the inconsistency cannot be resolved within a specified period of time, the employer must re-verify the employee's identity and work authorization through a specific process.

In order for an employer to be protected under the "safe-harbor" described in the new regulation, an employer must take reasonable steps to resolve the mismatch. An employer must follow certain procedures within a 30 day period from receipt of the letter from the Social Security Administration or the Department of Homeland Security and is given 90 days to resolve the matter. If an employer is unable to resolve the matter within 90 days of receipt of the letter, an employer should complete, within 3 days, a new I-9 Form following specific guidelines outlined in the regulation. If an employer still cannot confirm that an employee is authorized to work, an employer risks liability for violating the law by knowingly continuing to employ such individual. The I-9 Enforcement Section at Tindall & Foster, P.C. can help your company develop protocols to ensure protection under the "safe-harbor" provisions of this new regulation.

Second, DHS announced it will continue to seek criminal prosecutions in addition to pursuing civil fines. Government sources indicate that arrests by Immigration and Customs Enforcement (ICE) for criminal violations have increased from 24 in FY1999 to a record 716 in FY2006. There have been 742 criminal arrests since the beginning of FY2007 (through July 31) and upwards of 3,600 administrative arrests of employees on immigration violations. ICE has already levied over $29 million in fines and restitutions through the first six months of this year.

Third, DHS announced that it will soon publish a regulation to reduce the number of acceptable documents that an employee can present to an employer to establish identity and work authorization. Additionally, the Government states that it will increase civil fines imposed on employers who knowingly hire unauthorized workers by 25%.

Finally, DHS will propose regulations to require that all federal contractors and vendors use E-Verify, the successor to the Government's Basic Pilot Program. E-Verify is a web-based system that electronically verifies the employment eligibility of newly hired employees by comparing information taken from Form I-9 against records from the Social Security Administration and DHS databases. Additionally, some states already mandate the use of E-Verify for employers who have public contracts. To date, state legislatures have considered 1,404 immigration measures this year and enacted 170 of them; included are Arizona, Tennessee, Oklahoma, Georgia, and Hawaii.

In a statement issued last week that foreshadowed today's announcement, ICE spokesperson Russ Knocke said, "We are tough and we are going to get even tougher. There are not going to be any more excuses for employers, and there will be serious consequences for those that choose to blatantly disregard the law."

Tindall & Foster, P.C. is available to provide advice to employers in complying with such legislation and to examine and assess the documentation of workforces to evaluate the potential impact of this new regulation and enforcement policy.

Established in 1973, Tindall & Foster, P.C. has grown into the second largest immigration law firm in the United States and has one of the largest Form I-9 Practice Groups available. The Form I-9 Group is made up of highly-trained and experienced Attorneys and Staff experienced in managing complex I-9 employment verification audits and the representation of companies during the course of investigations. In addition to our years of experience representing employers being investigated by the Government, Tindall & Foster, P.C. now has a former ICE prosecutor on the team who participated in special task forces responsible for worksite enforcement investigations. Tindall & Foster, P.C. helps our clients identify immigration-related problems, develops immigration-related hiring policies, and manages internal policies and protocols.

As always, Tindall & Foster, P.C. will continue to monitor worksite enforcement activity and will make new information available to our clients via the Tindall & Foster, P.C. web site at www.tindallfoster.com, and, when appropriate, via future Email Bulletins.