



EMAIL BULLETIN

U.S. DEPARTMENT OF HOMELAND SECURITY (DHS) ANNOUNCES PLANS TO RENEW EFFORTS AT WORKSITE ENFORCEMENT OF I-9 EMPLOYMENT ELIGIBILITY VERIFICATION REQUIREMENT

Employer Sanctions Could Be on the Rise Again

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As reported in previous Tindall & Foster Email Bulletins, on November 2, 2005, the Department of Homeland Security (DHS) announced its pursuit of a comprehensive initiative to increase border security and interior immigration enforcement. Although entitled the Secure Border Initiative (SBI), a key prong of the program would enhance interior enforcement through “more robust worksite enforcement.” Recently, the Department of Homeland Security issued a press release affirming its renewed efforts at pursuing worksite enforcement of the employer’s obligation to verify employment eligibility of new hires.

These increasingly emphatic announcements from the DHS in recent months indicate that employer sanctions could be on the rise once again. Additionally, DHS statements further indicate a shift in strategy which would include a greater focus on potential criminal actions and plans to seize assets derived from illegal activity. Far more than mere rhetoric, these DHS warnings appear focused, well-planned strategies currently under active implementation. The recent Immigration & Customs Enforcement (ICE) Advisory provides, in part, as follows with respect to efforts to bring enforcement actions against employers who knowingly or recklessly employ unauthorized workers:

Employers that knowingly and recklessly employ illegal aliens must be punished. ICE [the agency charged with interior enforcement of U.S. immigration law] has already initiated a strategic shift in the way it approaches such employers by bringing criminal charges against them and seizing their illegally-derived assets -- rather than relying on the old tactic of administrative fines as sanctions. Last fiscal year, this new approach resulted in 127 criminal convictions, up from 46 the previous fiscal year. More employers are also being charged with money laundering violations, which can result in prison sentences of up to 20 years. Last year, a single ICE worksite enforcement investigation resulted in a settlement and forfeiture of \$15 million, an amount that represented the largest worksite enforcement penalty in U.S. history and surpassed the sum of all administrative fines from the previous eight years. ICE seeks to enhance its worksite enforcement

investigations with proposed additional funding. The Administration's Fiscal Year 2007 budget request seeks \$41.7 million in new funds and 171 additional agents to enhance ICE's worksite enforcement efforts.

In originally announcing the implementation of SBI in November 2005, DHS Secretary Chertoff emphasized that the Department will “address all aspects of the border security problem across the board—deterrence, detection, response, apprehension, detention, and removal.”

In the coming months, as the new SBI plans are implemented, backed by increased funding, employers should be aware that DHS is warning of renewed emphasis on employer sanctions for worksite violations. Employers must ensure that they fulfill their employment eligibility verification obligations, properly complete the Form I-9 Employment Eligibility Verification document, and comply with document retention requirements.

As the DHS pursues employer sanctions more aggressively, employers are encouraged to conduct internal audits to verify compliance with all regulatory requirements. For assistance in determining and implementing proper audit procedures, or for assistance in conducting a Form I-9 audit on premises, please contact your Tindall & Foster immigration attorney. Your Tindall & Foster attorney will be able to assist you with an initial audit and provide valuable information for ensuring ongoing compliance in accordance with regulatory requirements.