



EMAIL BULLETIN

RECENT HIGH PROFILE WORKPLACE ENFORCEMENT INITIATIVES BY U.S. IMMIGRATION & CUSTOMS ENFORCEMENT (ICE) IMPLICATE POTENTIAL CRIMINAL AS WELL AS CIVIL PENALTIES

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As reported in Tindall & Foster Email Bulletins last year, workplace enforcement initiatives are on the rise. Recent high profile initiatives by U.S. Immigration & Customs Enforcement (ICE) have led to sweeping raids and have raised the specter of potential criminal as well as civil penalties for the most egregious violations.

On December 12, 2006, ICE conducted sweeping raids on six Swift & Co. plants nationwide. Although Swift & Co. officials sought an injunction to block the raid they knew was coming, the U.S. Federal District Court for the Northern District of Texas denied injunctive relief. As a result, hundreds of first-shift Swift & Co. employees were detained by ICE officials, while others, particularly second-shift employees who had heard of the raid during the first shift, simply disappeared in order to avoid detention by ICE. The raids, while criticized by some for being poorly-executed in a manner that let hundreds escape, effectively disrupted Swift operations, which were temporarily shut down at six of the company's plants nationwide, despite Swift & Co. participation in a voluntary government program for verifying employment eligibility of new hires. The ICE raid was part of an ongoing investigation of identity theft by those employees using false or stolen Social Security Numbers to seek and obtain employment.

In court documents Swift asserted the company's efforts to employ only workers authorized to work in the United States, including the company's voluntary participation in the federal government's "Basic Pilot Program" Swift & Co. asserted that ICE should be prohibited from taking action to penalize the company for violations in connection with those workers who were screened through Basic Pilot. However, the Federal District Court refused to award injunctive relief and permitted ICE to go forward with plans for the raid, which was ultimately executed on December 12, eight days later than planned.

The penalty provisions of the Immigration & Nationality Act provide for criminal fines and even imprisonment. While civil penalties are not insubstantial, often the most dramatic penalties in the federal government's arsenal are criminal sanctions. Company officials who know and/or recklessly disregard a company's pattern or practice of employing individuals unauthorized for work in the United States can be criminally charged and can be sentenced to prison. "Turning a blind eye" to avoid actual knowledge

of unlawful employment practices can result in a charge of “constructive knowledge,” also a violation supporting criminal sanctions

From recent high profile workplace enforcement actions, including the months-long ICE investigation and subsequent raid of Swift & Co. on December 12, 2006, employers may take note of a few sobering facts:

First, participation in the Basic Pilot program for screening employment eligibility through the Social Security Administration database will not prevent an ICE raid.

Second, Form I-9 Audits should be started as a precaution not as a reaction. Once an investigation is in progress, efforts to pursue an internal self-audit as a remedial course of action may actually further compromise an employer’s standing with ICE investigators.

Third, an ICE raid can have an enormous and costly impact on a company’s operations, and can potentially lead to criminal and civil penalties.

Employers are cautioned to seek legal advice when conducting self-audits for I-9 compliance. For more information on conducting internal self-audits, and assistance in developing appropriate compliance procedures in an effort to increase your company’s compliance with both employment eligibility verification requirements and prohibitions against immigration-related employment discrimination, contact your Tindall & Foster immigration attorney. Sub-specialty practitioners in Tindall & Foster’s Workplace Compliance practice group will be happy to provide consultation and assistance in this area of growing importance in immigration law.