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THE UNITED KINGDOM IMPLEMENTS STRICT NEW LAW IMPOSING CIVIL AND CRIMINAL PENALTIES FOR EMPLOYING UNAUTHORIZED WORKERS

On February 29, 2008, a new United Kingdom Law aimed at the “prevention of illegal migrant working” will go into effect and will dramatically alter the responsibility of UK employers. Enacted pursuant to the Immigration, Asylum, and Nationality Act of 2006, the law imposes penalties on employers who employ unauthorized workers.

An employer who employs a worker who is not legally authorized to undertake the particular work in question may be liable to pay a civil penalty of up to £10,000 (about \$20,000) per unauthorized worker. In addition, an employer who knowingly employs an unauthorized migrant may commit a criminal offence and upon summary conviction may be fined up to £5,000 per illegal migrant and imprisoned for up to 12 months. Following conviction on indictment, there is no limit on the criminal fine that may be imposed, and the employer may be subject to imprisonment for up to two years.

The law provides a mechanism for UK employers to establish an excuse against payment of a civil penalty for the employment of any particular worker whose employment begins after February 29, 2008. An employer may choose to review and photocopy certain original documents identified by the Home Office as proving a potential employee’s authorization to undertake the work in question. The excuse must be established before employment with the company begins. An employer who can properly demonstrate that it complied with the document review requirements will have established the statutory excuse, and may not have to pay the civil penalty even if the employee was, in fact, working illegally. The excuse is not available if the employer actually knows that the employee is not authorized for employment. Therefore, while the law affords a “safe harbor” against strict liability and possibly allegations of “constructive knowledge”, there is no safe harbor for violations resulting from actual knowledge of unlawful employment.

The Home Office suggests that appropriate document checks be performed on all prospective employees beginning February 29, 2008, although document review is not required. It is advised that all UK employers evaluate their hiring practices to ensure that they are in compliance with the new law, and that they are appropriately establishing the statutory excuse available in the case of all new employees.