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This Immigration Update<sup>®</sup> from FosterQuan, LLP contains important information regarding the following:

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## **ABERCROMBIE & FITCH FINED OVER \$1 MILLION FOR DEFECTIVE ELECTRONIC FORMS I-9**

On September 28, 2010, U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations (HSI) announced a \$1,047,110 fine settlement reached with the clothing retailer Abercrombie & Fitch for violations related to the employer's obligation to verify the employment eligibility of its workers.

In November 2008, ICE initiated a Form I-9 audit of Abercrombie & Fitch's retail stores in Michigan. Although ICE found no instances of the knowing hire of unauthorized aliens, they did uncover numerous technology-related deficiencies in Abercrombie & Fitch's electronic Form I-9 verification system.

The fine levied against Abercrombie and Fitch is the largest fine in U.S. history for a violation based entirely on an insufficient electronic Form I-9 system.

"Employers are responsible not only for the people they hire but also for the internal systems they choose to utilize to manage their employment process and those systems must result in effective compliance," said Brian M. Moskowitz, special agent in charge of ICE HSI for Ohio and Michigan. "We are pleased to see Abercrombie working diligently to complete the implementation of an effective compliance system; however, we know that there are other companies who are not doing so. This settlement should serve as a warning to other companies that may not yet take the employment verification process seriously or provide it the attention it warrants."

An electronic Form I-9 system must comply with federal Form I-9 recordkeeping and technical safeguards so as to ensure all data captured from a paper Form I-9 is accurately and authentically entered and retained electronically. In general, these regulations require:

- The Form I-9 to be legible when seen on a computer screen, microfiche, microfilm or when printed on paper;
- The name, content and order of data not to be altered from the paper version of the form;

- Reasonable controls to ensure the accuracy and reliability of the electronic generation or storage system;
- Reasonable controls designed to prevent and detect the unauthorized or accidental creation, deletion or deterioration of stored Forms I-9;
- Software having an indexing system that permits the identification and retrieval for viewing or reproducing of relevant documents and records maintained in an electronic storage system;
- The ability to reproduce legible hardcopies;
- Software that is not subject to any agreement that would limit or restrict access to and use of the electronic generation system by a government agency on the premises of the employer, recruiter or referrer for a fee;
- A system that is able to identify anyone who has created, accessed, viewed, updated, or corrected an electronic Form I-9 and also to see what action was taken.

In 2009, ICE implemented a comprehensive strategy to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce by increasing enforcement efforts against employers. In the last year, ICE has levied a record number of civil and criminal penalties against employers who violate immigration laws. The Abercrombie & Fitch case evidences that ICE intends to scrutinize not only the Form I-9 itself, but also any electronic Form I-9 system that may be implemented for Form I-9 compliance and retention. Employers should, therefore, be advised to seek proper assistance from experienced counsel to ensure that any electronic system used is in compliance with the regulations.

For more information on conducting an independent Form I-9 audit or for advice and consultation in connection with workforce compliance and electronic I-9 systems, please contact your FosterQuan immigration attorney.

As always, FosterQuan will continue to monitor developments in the area of I-9 Employment Eligibility Verification and workforce compliance and will provide additional information via our firm's [website](#) and future Immigration Updates<sup>®</sup>.