

Abercrombie & Fitch Fined More Than \$1 Million After I-9 Audit

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By Allen Smith

The U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations announced Sept. 28, 2010, that a settlement for more than \$1.04 million had been reached with Abercrombie & Fitch for violations of the Immigration and Nationality Act.

The settlement resulted from a November 2008 Form I-9 inspection of Abercrombie & Fitch's retail stores in Michigan. The audit uncovered numerous technology-related deficiencies in the company's electronic I-9 verification system. No instance of the knowing hire of an unauthorized alien was discovered.

The settlement is the highest ever for a technical violation, according to Robert Loughran, an attorney with FosterQuan LLP in Austin, Texas. He said Abercrombie & Fitch used home-grown software that left out a key component—having individuals attest to their immigration status. The settlement should prompt employers to make sure they do due diligence when selecting I-9 software, he added. He described the settlement amount as shockingly large for a company that appeared to do everything right except for a mistake in the software that it used.

"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 Moskowitz, special agent in charge of ICE's Office of Homeland Security Investigations in 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."

Loughran said that the enforcement action was "very well thought out" and that the "question is who's going to be next."

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