Immigration Compliance: What's Coming in 2019

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Employers, as you settle into 2019 and solidify your plans and objectives for the year, consider adding worksite immigration compliance to your to-do list. In 2018, the Trump administration held true to its Buy American, Hire American policy. As a result, worksite investigations, I-9 audits, and criminal and administrative worksite-related arrests surged by 300 to 750 percent over 2017. The administration has signaled that immigration enforcement will continue to be a priority this year, and employers should be prepared for three ways they may be contacted related to their compliance records.

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NOTICE

The I-9 Employment Eligibility Verification audit surge will continue throughout 2019. Employers should be ready to receive a Notice of Inspection demanding production of their Form I-9 records within 72 hours. Employers should review U.S. Citizenship and Immigration Services ("USCIS") Handbook for Employers M-274, and sharpen their familiarity with their obligation to verify the employment authorization and identity of each employee. Employers should also review the state of their Forms I-9 to determine whether an internal self-audit or an external audit would be on order. If you do not have a Form I-9 for all current employees hired after November 6, 1986, that alone is an indication that you need to examine the state of your I-9 records.

KNOCK

However, don't stop there. If you hire foreign national employees, you should be aware that USCIS' Fraud Detection and National Security (FDNS) unit may knock at your office door to conduct a site visit to validate the details of petitions filed with USCIS. Your employees and managers may be questioned to confirm the salary, position duties, and location of employment, and USCIS might ask to review your personnel records. Pay particular attention to changes in employment for your employees holding H-1B, L-1, and even your F-1 students working for you on optional practical training. Business changes are inevitable; please keep your immigration counsel apprised so that amendments can be filed where necessary and minimize surprises if FDNS shows up unannounced at your place of business.

LETTER

Starting in spring 2019, you might receive a Social Security No-Match Letter. These No-Match Letters inform employers that the information reported on an individual employee's W-2 form (or an employer's quarterly tax filing) does not match Social Security's records. Issuance of such a letter may be simply an administrative error, and employers should not assume the referenced employee is unauthorized to work in the United States. Taking adverse employment actions upon receipt of a No-Match Letter, without further examination of all the facts, can trigger the law's anti-discrimination provisions.

To minimize the possibility of a No-Match Letter, it is vital that your employees responsible for I-9 completion carefully review the I-9 form and documentation presented to avoid errors in completion. If you receive a No-Match Letter, contacting immigration counsel is a good first step to develop a consistent policy approach to this form of worksite compliance.

We would be remiss not to mention E-verify. E-verify is the U.S. government's Internet-based system that compares the information on a Form I-9 with government databases to confirm an individual's employment

eligibility. As the nation continues to grapple with border protection effectiveness, E-verify is often touted as the "invisible wall" that can eliminate or reduce unauthorized employment. It is not clear if E-verify will ever become mandatory for all employers, but as you conduct your compliance check, consider the pros and cons of E-Verify to determine if it is right for your business.

CONCLUSION

Whatever form enforcement may take this year, employers should evaluate their current worksite and immigration policies to confirm they are in compliance with the law's standards. Over the coming weeks, we will cover these issues and more to keep you up-to-date on compliance as we move through 2019.

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