Arnall Golden Gregory LLP

Immigration Compliance Newsletter

Published by Montserrat Miller, Immigration & Privacy Practice Teams | Washington, DC office

June 6, 2011

FEDERAL DEVELOPMENTS

U.S. Supreme Court Gives Stamp of Approval to Arizona's Mandatory E-Verify Law

In a surprising and divided decision, on May 26, 2011 the Supreme Court, Chief Justice Roberts writing the majority opinion, handed Arizona a legal victory in their push to mandate use of the E-Verify program for private employers to verify the employment eligibility of new hires. At issue was the constitutionality of Arizona's Legal Arizona Workers Act and whether federal pre-emption would bar the state's mandate regarding the use of E-Verify for in-state businesses.

The Court concluded:

(1) Arizona's licensing law, which suspends or revokes the business license of in-state employers that employ unauthorized aliens, falls within the confines Congress choose to leave to the states and is therefore not expressly pre-empted.

(2) That federal preemption is not a valid argument because Arizona's procedures implement the sanctions that Congress expressly allowed the states to pursue through licensing laws. In effect, the Court states that regulating in-state businesses through licensing laws, even if in the area of immigration law, is acceptable.

(3) The immigration law establishing the E-Verify program contains no language circumscribing state action and therefore mandating use of E-Verify, as Arizona did, is acceptable.

See Chamber of Commerce of the United States of America, et al., Petitioners v. Michael B. Whiting, et al., Supreme Court No. 09-115, 563 U.S. ____ (2011) for the full opinion. Employers can expect more states to push their own E-Verify laws, mandating in-state employers to use the program for all new hires.

Social Security Administration to Renew Issuance of No-Match Letters

Employers be warned! The Social Security Administration (SSA) recently announced that it will resume sending employers decentralized correspondence (DECOR), commonly known as No-Match letters, beginning in April 2011, for tax year 2010. They will not send letters held for tax years 2007-2009. You may recall that the Department of Homeland Security was sued over a proposed regulation regarding No-Match letters and SSA suspended sending out such letters in response to the litigation.

No-Match letters are sent to employers, employees and self-employed workers to inform them of discrepancies between their name and SSA records so that earnings are correctly listed.

Employers need to have a No-Match letter Plan of Action in response to receipt of any such letters as these No-Match letters would be an item the Department of Homeland Security, Immigration and Customs Enforcement would ask to see in a form I-9 audit or worksite enforcement operation.

FTC Settles Charges against Two Companies That Allegedly Failed to Protect Sensitive Data, Including a Company Which Provides a Form I-9 Software Product

The Federal Trade Commission (FTC) settled with Ceridian Corporation and Lookout Services, Inc. for charges that both Ceridian (HR and payroll services company) and Lookout Services, Inc. (Form I-9 Software Solution Company which sells a product called I-9 Solution) claimed they were taking reasonable measures to secure consumer data, including Social Security numbers, but failed to do so. Consequently, both companies experienced data security breaches and exposed consumers personally identifiable data to hackers.

The settlement orders bar misrepresentations, including claims about the privacy, confidentiality or integrity of any personal information collected by the two companies. Additionally, the orders require the companies to implement comprehensive information security programs.

Data security and the risk of identity theft is a major concern of the FTC and all employers who collect, disseminate and/or use personally identifiable data, such as Social Security numbers and credit card information, should have strong privacy protections and plans in place.

TIP CORNER...MINUS THE JAR

Employment Eligibility Verification Form (I-9)

I've heard about, and also been asked by employers if it is OK to use the Spanish version of the Employment Eligibility Verification form (form I-9) for Spanish speaking employers/employees?

The answer is NO, unless you are an employer/employee in Puerto Rico. The Spanish version of the form I-9 may be printed for reference by Spanish-speaking employers and employees, but outside of Puerto Rico, the form I-9 must be completed using the English version.

Please contact the following attorneys for more information on Immigration Compliance.

Montserrat C. Miller, Partner
montserrat.miller@agg.com
202.677.4038

Teri A. Simmons, Partner
teri.simmons@agg.com
404.873.8612

Stephen P. Pocalyko, Of Counsel
stephen.pocalyko@agg.com
404.873.8592