



Immigration Compliance Newsletter

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STATE DEVELOPMENTS

Happy New Year! Is Your Company Required by State Law to use E-Verify?

Several immigration-related bills passed in state legislatures last year, and one key provision was a mandate on employers to enroll in and use the E-Verify program. Generally, mandatory use of E-Verify at the state level is driven by an employer's size and rolled out over a two-year period starting January 1st. E-Verify is a web-based program which allows employers to verify an individual's work authorization by taking information from the Employment Eligibility Verification form (form I-9) and plugging it into the system. Prior to enrolling, companies should review their practices and procedures with respect to their forms I-9 and consider a self-audit by outside counsel to ensure compliance with the law.

States with a mandatory E-Verify requirement for private employers effective January 2012 include:

- **Georgia** – all private employers with 500+ employees must be using E-Verify for new hires
- **Tennessee** – all private employers with 500+ employees must be using E-Verify for new hires

As 2012 progresses, more private employers will be mandated by state laws to use E-Verify, including employers in Alabama, Georgia, North Carolina and Tennessee. It is important to note that for some industries, such as hospitality, construction, landscaping and so forth, use of E-Verify may have an impact on one's workforce.

Save the Date—Spring 2012: Montserrat Miller will conduct a webinar on state E-Verify mandates. The webinar will also feature training on proper completion of the form I-9, use of E-Verify and a discussion on immigration best employment practices regarding a company's employment compliance program.

FEDERAL DEVELOPMENTS

Supreme Court Revisits the Arizona Immigration Law

On December 12th, the United States Supreme Court granted certiorari to an appeal of the 9th Circuit U.S. Court of Appeals [ruling](#) upholding a federal judge's decision that halted enforcement of several provisions of Arizona's [S.B. 1070](#) immigration bill, specifically those relating to the state's policing powers. These provisions include a registration requirement, a provision that would make it illegal for an undocumented immigrant to seek or obtain employment, a provision that would allow law enforcement to detain or arrest those suspected of being illegal immigrants without obtaining a warrant, and, a provision that requires that the immigration status of people who are arrested be determined before they are released.

The Supreme Court's decision to grant certiorari in this case follows a separate ruling made by the Court in October 2010 in the matter of *Chamber of Commerce of the United States of America, et al., Petitioners v. Michael B. Whiting, et al.* In that [decision](#), the Supreme Court ruled that a provision in S.B. 1070 requiring

Arizona employers to use the federal E-Verify program was not preempted by federal law and therefore Arizona could mandate use of E-Verify by private employers.

A ruling by the Supreme Court in the instant case could impact similar policing measures passed in Alabama, Georgia, South Carolina and other states. Arguments are expected before the Court in April 2012.

ICE Worksite Enforcement Priorities in 2012

Immigration and Customs Enforcement's ("ICE") worksite enforcement priorities remain to target egregious employers and focus their efforts in critical infrastructure sectors. The latter includes chemical production, food, energy and transportation. It is expected that ICE will continue to conduct audits in concentrated surges, such as by issuing 1,000 Notices of Inspection ("NOI") at any given point in time. However, these concentrated surges do not foreclose ICE from individually issuing a NOI to a company.

To assist with "form I-9" audits generated by the issuance of a NOI, the Employment Compliance Inspection Center ("ECIC") was established to serve as a centralized point of contact for audit issues and to assist the field in streamlining its audits. The ECIC, based outside of Washington, DC, has a handful of auditors and is looking to hire more. It will be their job to assist auditors in the field, especially in large scale audits of forms I-9, where employers are being investigated for criminal violations and/or with employers who are in critical infrastructure and/or employers who are egregious violators.

Justice Department Files Lawsuit Alleging Immigration-Related Employment Discrimination by the University of California, San Diego Medical Center



The Department of Justice ("DOJ") recently announced the [filing](#) of a lawsuit against the University of California, San Diego Medical Center ("Center"), alleging that the Center discriminated in the employment eligibility verification process against individuals who are authorized to work.

The Center allegedly engaged in a pattern or practice of subjecting non-U.S. citizen hires to additional demands for documents issued by the Department of Homeland Security in order to verify and re-verify their employment eligibility while not requiring the same of U.S. citizens. The complaint seeks a court order prohibiting future discrimination by the Center, monetary damages for any individuals harmed by the Center's actions and civil penalties.

The Civil Rights Division Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC") is responsible for enforcing the anti-discrimination provisions of the Immigration and Nationality Act ("INA"), which protects work-authorized individuals against discrimination in hiring, firing, and recruitment or referral for a fee on the basis of citizenship status and national origin. So for instance, one cannot ask a new hire presenting a Permanent Resident Card when completing the form I-9 to show additional documents of their work or legal status in the United States, such as also asking them to present a driver's license and/or social security card.

ICE Announces Several Major Employers Have Signed Up for IMAGE

ICE Mutual Agreement between
Government and Employers



Several major employers, including Best Western International, Chick-Fil-A, Inc., Hyatt, Kelly Services, Lexmark, Smoothie King and Toyota Motor Engineering and Manufacturing North America have agreed to [partner](#) with ICE by joining its employment compliance program called IMAGE ("ICE Mutual Agreement between Government and Employers"). IMAGE is a controlled program in which those seeking to partner with ICE must agree to several items, including enrolling in E-Verify, following written hiring policies on

compliance, engaging in annual self-audits by an external auditor such as an immigration attorney and most important, submitting to an ICE audit of their forms form I-9.

Department of Homeland Security Extends TPS for Honduras and Nicaragua

Homeland Security has [extended](#) Temporary Protected Status (“TPS”) for certain nationals from Honduras and Nicaragua for an additional 18 months, through 2013. This extension may affect certain employees working in the United States with work authorization. Note also that Homeland Security is automatically extending the validity of employment authorization documents (“EADs”) issued under the prior extension of TPS. This is important to note for employees whose work authorization may be expiring and are coming up in a tickler system for re-verification purposes as they may not have an “updated” EAD but may still be eligible to work in the United States.

For more information on how AGG can assist companies with their immigration compliance programs, please contact the following attorneys:

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Not *if*, but *how*.®

The *Immigration Compliance Newsletter* provides a general summary of recent legal and legislative developments and is for informational purposes only. It is not intended to be, and should not be relied upon as, legal advice.

Arnall Golden Gregory, LLP has a full-service business immigration and compliance team ready to provide legal advice and counsel on issues addressed in this newsletter. For more information please contact Montserrat Miller at 202.677.4038.

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