



LABOR & EMPLOYMENT DEPARTMENT

ALERT

FEDERAL GOVERNMENT CONTRACTORS REQUIRED TO VERIFY WORK AUTHORIZATION

By Theodore M. Eisenberg and Alka Bahal

On June 6, 2008, President Bush amended Executive Order 12989 to require federal government contractors to use E-Verify, a federal Internet-based system operated by U.S. Citizenship and Immigration Services in partnership with the Social Security Administration, to verify the work authorization of all new hires and existing personnel assigned to perform work on future federal contracts. The Order does not expressly address whether or not subcontractors will be required to comply.

As amended, Executive Order 12989 requires “adherence to the general policy of contracting only with providers that do not knowingly employ unauthorized alien workers and that have agreed to utilize an electronic employment verification system designated by the Secretary of Homeland Security to confirm the employment eligibility of their workforce...”

Executive Order 12989 amends the Federal Acquisition Regulation to the extent necessary to “implement the debarment responsibility, the employment eligibility verification responsibility, and other related responsibilities.” Full text of the Executive Order is available at the White House Web site at: www.whitehouse.gov/news/releases/2008/06/20080609-2.html. The objective of the Executive Order is to prevent illegal aliens from working on federal projects

and to reduce, and ultimately eliminate, the Federal Government’s reliance on contractors who flout federal immigration laws.

Federal Government contractors are subject to audits of compliance with federal affirmative action obligations. Pursuant to a governmental work-sharing agreement, when the Office of Federal Contract Compliance Programs audits a company for affirmative action purposes, it also reviews I-9 form compliance. The new Executive Order increases contractor exposure to immigration enforcement actions and to debarment. Regulations promulgated pursuant to the Executive Order should provide additional guidance in this regard. The Order grants rulemaking authority to the Department of Homeland Security.

Fox Rothschild can provide appropriate guidance to federal contractors, integrating both affirmative action and immigration compliance considerations. Should you have any questions or concerns related to any of these issues, please contact Theodore Eisenberg (affirmative action) at 973.994.7533 or teisenberg@foxrothschild.com, Alka Bahal (immigration) at 973.994.7800 or immigration@foxrothschild.com, or any member of Fox’s Labor & Employment Practice. Visit us on the Web at www.foxrothschild.com.

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