



IMMIGRATION PRACTICE

ALERT

U.S. GOVERNMENT TO INCREASE FINES FOR EMPLOYERS WHO HIRE UNAUTHORIZED WORKERS

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On February 26, the U.S. Department of Justice (DOJ), together with the Department of Homeland Security (DHS), published a Final Rule in the *Federal Register* that increases civil fines by approximately 25 percent against employers who violate the Immigration Reform and Control Act of 1986 (IRCA) by knowingly hiring unauthorized aliens. The Final Rule is part of the DHS's worksite enforcement efforts to toughen sanctions against such employers. DHS Secretary Michael Chertoff stated that the administration was acting to fill the void Congress left after its failure to pass comprehensive immigration reform. The new rule will take effect on **March 27, 2008**.

Under the new fine system, the minimum penalty for knowing employment of an unauthorized alien will increase by \$100, from \$275 to \$375. Some of the higher civil penalties for a first violation will increase by \$1,000. The maximum civil penalty for multiple violations will rise from \$11,000 to \$16,000. The penalties will be determined on a per alien basis, i.e., if an employer knowingly employs, or continues to employ, 10 authorized aliens, that will result in 10 fines. The DOJ explained that under the new rule, the civil penalties will be adjusted for inflation for the first time since 1999.

This action is consistent with the government's efforts to strengthen worksite enforcement efforts and to sanction employers, both civilly and criminally, who knowingly hire unauthorized aliens. During fiscal year

2007 alone, Immigration and Customs Enforcement (ICE) obtained more than \$30 million in criminal fines, restitutions, and civil judgments in worksite enforcement investigations.

New Jersey Senators Introduce Stringent Bill Aimed to Punish Employers Who Hire Undocumented Workers

Also on February 26, New Jersey Senate Majority Leader Stephen M. Sweeney and Senator John H. Adler introduced Senate Bill 1312 (the Bill) aimed at penalizing companies that knowingly or intentionally hire illegal aliens. Both Senators have opined that the Bill is a direct result of the federal government's failure to enforce federal immigration laws.

The Bill, as initially proposed, provides for the following penalties:

“For the first violation where an employer *knowingly*¹ hired unauthorized aliens, a court shall order the employer to:

- terminate such employment
- be subject to a **three-year probationary period during which the employer shall submit quarterly reports for each new hire**
- **file a sworn affidavit** within three business days after the order has been issued **or face the suspension of any business**

[1] Defined as “those actions described in 8 USC §1324a.” (The Immigration Reform and Control Act, as currently in effect)

license held by the employer until such time a signed sworn affidavit is filed

- In addition, a court may consider a number of factors surrounding the violation and order the suspension of any business license for a period not to exceed 10 business days.

For the first violation where an employer intentionally² hired unauthorized aliens, a court shall order the employer to:

- terminate such employment
- be **subject to a five-year probationary period** during which the employer shall submit quarterly reports for each new hire
- **incur suspension of any business license** for a minimum 10 days after considering all factors surrounding the violation
- **file a sworn affidavit** until which all licenses shall remain suspended

For any **second violation**, a court shall order the **permanent revocation of any and all of the employers' business licenses issued by the State or any political subdivisions of the State.**"

This proposed Bill also would require all employers to verify the employment eligibility of every new employee it hires through the DHS's basic pilot program, also known as the E-Verify program. The program is an internet-based system jointly administered by DHS and the Social Security Administration (SSA) that enables participating employers to verify whether newly hired employees are authorized to work in the U.S. by checking the information employees provide on their Form I-9 against both DHS and SSA databases.

This Bill has been referred to the Senate Labor Committee. If passed by both houses of the Legislature and signed into law by the Governor, the Bill would become effective as of **January 1, 2009**.

The Bill is reminiscent of the recent immigration-related legislation sanctioning employers who hire unauthorized workers in Arizona, known as The Legal Arizona Workers Act, which has been generally viewed as the most stringent state law of its type in the nation and which has recently withstood several legal challenges.

For more information regarding the issues addressed in this *Alert*, please contact the author at immigration@foxrothschild.com or 973.994.7800, or another member of Fox Rothschild's Immigration Practice. Visit us on the web at www.foxrothschild.com.

[2] Defined as "with respect to a result or to conduct described in this act, that a person's objective is to cause that result or to engage in that conduct."



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