

LEGAL UPDATE

June 2011 By: Colleen L. Caden and Alice B. Stock

GOVERNMENT CRACKS DOWN ON EMPLOYERS FOR PAPERWORK VIOLATIONS

Employers are facing increased scrutiny and fines concerning the paperwork they are required to complete when hiring employees. Specifically, the Obama Administration has stepped up its crack down on employers who do not complete their I-9 forms correctly or who employ unauthorized workers.

The Immigration Reform and Control Act of 1986 ("IRCA") requires all U.S. employers to verify the identity and work authorization of every employee hired in the U.S. after November 6, 1986, by completing an I-9 form. Within three days of the start of employment, employees and employers must complete an I-9 form in which the employee attests to his or her immigration status and the employer attests that it has reviewed original identity and work authorization documents related to that employee indicating that the employee is authorized to work.

While the Bush Administration focused its immigration enforcement efforts on raiding work places to arrest illegal workers, the Obama Administration is instead raiding workplaces to audit and penalize employers. Employers have faced large scale audits and huge fines, even though they have not knowingly hired unauthorized aliens, due solely to paperwork errors. For instance, Abercrombie & Fitch was fined \$1 million solely for paperwork violations on their I-9 forms.

In 2010, Immigration and Customs Enforcement ("ICE") audited more than 2,750 companies and levied a record \$7 million in fines. With a new Employment Compliance Inspection Center established in early 2011, ICE is expected to audit at least 5,000 companies annually.

The Obama Administration, through ICE, is sending the message to employers is that they must take the employment authorization process and I-9 completion seriously. According to ICE special agent Brian M. Moskowitz, the fines already imposed "should serve as a warning to other companies that may not yet take the employment verification process seriously or provide it the attention it warrants."

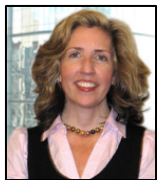
Although the one-page I-9 form may appear simple to complete, errors in I-9 completion abound even among large and sophisticated companies. This happens because employers often delegate I-9 completion to employees who have an incomplete understanding of the I-9 process or little or no training in the legal requirements of IRCA.

To avoid exposure to large fines and penalties, we recommend that employers, regardless of their size, conduct internal audits of their I-9 forms and processes and training in IRCA compliance. Pryor Cashman attorneys can provide such training and guidance and protocols for conducting internal I-9 audits.

The foregoing is merely a discussion of the government's crack down on employers who do not complete their I-9 forms correctly or who employ unauthorized workers. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Colleen L. Caden, Esq. at 212-326-0147, ccaden@pryorcashman.com or Alice B. Stock, Esq. at 212-326-0480, astock@pryorcashman.com.

Copyright © 2011 by Pryor Cashman LLP. This Legal Update is provided for informational purposes only and does not constitute legal advice or the creation of an attorney-client relationship. While all efforts have been made to ensure the accuracy of the contents, Pryor Cashman LLP does not guarantee such accuracy and cannot be held responsible for any errors in or reliance upon this information. This material may constitute attorney advertising. Prior results do not guarantee a similar outcome.

ABOUT THE AUTHORS



COLLEEN L. CADEN

Partner

Direct Tel: 212-326-0147

Direct Fax: 212-798-6304

ccaden@pryorcashman.com

Recognized by Super Lawyers and Best Lawyers in America for her work in Business Immigration Law, Colleen Caden represents clients in the pharmaceutical, media, consumer products and food manufacturing industries as well as in the professional sports, arts and entertainment fields.

Ms. Caden has experience in all aspects of immigration and nationality law and ensuring compliance with immigration laws, U.S. Department of Labor regulations and the U.S. Citizenship and Immigration Services programs. She has extensive experience advising clients on:

- The development and implementation of immigration programs and policies
- Strategic planning of long-term and short-term immigration needs to meet their unique circumstances and needs
- Immigration issues related to changing corporate structure

Ms. Caden also has a wealth of experience in preparing temporary visa petitions and applications for permanent residence. She also regularly speaks on U.S. business immigration issues.

While at Brooklyn Law School, Colleen served as Articles Editor of The Journal of Law and Policy and was Vice President of the Moot Court Honor Society.



ALICE B. STOCK

Partner

Direct Tel: 212-326-0480

Direct Fax: 212-798-6944

astock@pryorcashman.com

Recognized by *Super Lawyers* for her work in Employment and Labor Law, Alice Stock represents management in virtually all aspects of labor and employment law, employment litigation and business immigration law. She represents clients in the airline, manufacturing, finance, education, entertainment, technology, biotech, pharmaceutical and food and beverage industries, among others.

Ms. Stock represents domestic and international companies as well as individuals in obtaining nonimmigrant and immigrant visas and citizenship for executives, managers, professionals, artists, athletes and other individuals with special skills. She also counsels and represents employers concerning corporate mergers and acquisitions, I-9 compliance and investigations.

Ms. Stock counsels and litigates on behalf of domestic and international employers on matters arising under the ADA, ADEA, Title VII, ERISA, COBRA, WARN, FLSA, NLRA, LMRA, FMLA,

Sarbanes-Oxley state and local discrimination and wage and hour laws, and wrongful discharge law. She represents management before federal and state courts and federal, state and local administrative agencies, and in labor arbitrations. Ms. Stock handles matters involving:

- Employment discrimination, sexual harassment, equal employment opportunity, and affirmative action
- Employment-at-will, restrictive covenants, wrongful discharge, and workplace torts
- Labor relations, union organizing, collective bargaining, labor arbitrations, unfair labor practices, strikes, picketing, boycotts, and labor injunctions
- Human resources administration, personnel forms and policies, and employee handbooks
- Wage and hour laws, family and medical leave, employee theft, drug testing, AIDS, and other workplace law matters
- Independent contractor issues and employee misclassification
- Occupational safety and health
- Plant closings and mass layoffs
- Employee benefits issues and ERISA litigation
- Labor and employment law issues in mergers, acquisitions, sales, corporate reorganizations, and bankruptcies

Ms. Stock is a graduate of The Harvard Law School.