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Immigration Update

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Many of our hospitality clients are revisiting immigration requirements to see if there are any advantages that they have overlooked. One overlooked advantage is the USCIS's E-Verify system. Employers know that the IRCA requires them to satisfy the Form I-9 requirements. Many have found this difficult to implement and have been the targets of worksite enforcement operations by U.S. Immigration and Customs Enforcement ("ICE") that are costly to defend and often result in significant fines. Traditionally, many hospitality employers have looked at the E-Verify system as something to be avoided due to the time required to learn how to use it and the number of potential employees that the system would prevent them from hiring.

With the expansion in the number of state laws requiring the use of E-Verify and the increasing risks to hospitality and other employers from expensive worksite enforcement actions, many hospitality organizations are revisiting whether it makes sense to use this system before being required by state or federal law to do so. At the same time, the Social Security Administration has resumed sending out "no match" letters when the name and Social Security number of an employee do not match. It can be time consuming to resolve these no-match situations. Moreover, as we have reported in other Immigration Alerts, ICE views employers that fail to resolve no-match letters as candidates for enforcement actions. Employers who use E-Verify generally do not receive no-match letters because the E-Verify system will kick out the no-matches at the outset, so the employee will not be hired. All these factors combine to suggest that hospitality employers may want to revisit their traditional aversion to E-Verify and re-evaluate whether it makes sense in the current regulatory environment to use it.

The government's proposal to streamline the EB-5 program also may make that program attractive to those seeking to develop hotels or other hospitality facilities, for several reasons. First, the primary target of the EB-5 program may now be Chinese investors due to the severe backlogs in the immigration quotas for that country. From an immigration perspective, this makes the EB-5 program more attractive to potential wealthy Chinese investors. Second, hospitality facilities tend to be labor intensive as is the development process. This makes them more attractive for satisfying the EB-5 employment requirements. Finally, the development of regional centers ("RCs") makes the EB-5 program a more convenient vehicle than it has been in the past. These RCs are entities formed to attract and pool investments that qualify for EB-5 consideration. Utilization of an appropriate RC for a hotel development project may facilitate the financing necessary for the project.