



IMMIGRATION PRACTICE

# ALERT

## IMMIGRATION HEADLINES: READ BETWEEN THE LINES AND BE PREPARED

By Robert S. Whitehill

Those tracking immigration headlines are getting the message loud and clear that employers across the nation will face increased audits of I-9 forms and are having greater difficulty in securing visas for foreign workers. The immigration issue is also sparking higher degrees of political pyrotechnics and public passion.

The use of immigration as a political weapon predominates the news. The federal government has commenced litigation to force the State of Arizona to abandon its tough stance on illegal immigration. There was a recent federal raid on a high technology manufacturer in California and “silent raids” are happening at nearly 3,000 other U.S. companies.

As Arizona has gone, will the whole nation so go? Arizona has challenged everyone within its borders to be able to provide evidence they are lawfully present in the United States or face criminal charges. Arizona has also passed a law obligating employers to sign up for and use the E-verify system and suffer the possible consequences of being put out of business by the withdrawal of their business license for engaging the work of undocumented aliens.

While the federal government has stepped into the fray by filing the case of *U.S. v. Arizona*, many state legislatures have considered, and some have passed, copycat legislation. It is critical that employers in all

states be prepared for whatever may follow – including getting compliance policies, processes and documentation in perfect order.

The federal government is moving ahead to attempt to protect the country’s borders, but of perhaps more interest to employers is the prospective audit of their I-9 employment verification records. The United States Immigration and Customs Enforcement (USICE) has a well financed and staffed task force of more than 20,000 agents who audit employer I-9s every day. In contrast to the raids that made headlines during the administration of President George W. Bush, these new audits have been dubbed “silent raids.”

In a front page story, *The New York Times* recently called this “a quieter enforcement strategy; sending federal agents to scour companies’ records for illegal immigrant workers.” In response to silent raids, thousands of undocumented workers have left their work sites, leaving employers to face not only a diminished workforce but substantial fines. Employers should anticipate the possibility they will be audited and proactively conduct self audits to determine whether their workforce is authorized to work and their I-9s are in compliance with the law.

I-9 compliance is deceptively complicated, and this is especially important to understand.

Likewise, application to USCIS or the Department of Labor for an immigration benefit or labor certification is not only complicated but has become increasingly unpredictable. At the recent conference of the American Immigration Lawyers Association, Executive Director Crystal Williams lamented that a new acronym has thrust its way into the immigration lexicon: “MSU,” short for “making stuff up.” She described the phenomenon that we have observed: the USCIS and the Department of Labor “make stuff up” as they go along, sending out Requests for Evidence (RFEs) or Denials, not necessarily based upon an application of the regulations or relevant to the application submitter.

At the same conference, USCIS Director Alejandro Mayorkas stated that among the largest challenges to the agency is what he calls “inconsistency of adjudication.” One actual example of which I am aware is where an employer sponsored three foreign workers by filing three applications for the same type of position paying the

same wages in the same city, resulting in one quick approval, one quick denial, and one matter still pending. There may be any number of explanations for why this is happening. One may be inferred from the 2009 Annual Report of the USCIS Ombudsman on the status and the service of USCIS, which shows that the number of applications received by USCIS for adjudication has diminished.

Should you have questions or concerns about your organization’s preparedness for a silent raid by the federal government, please contact us immediately.

For more information regarding the information in this alert, or if you require assistance with your company’s immigration or employment issues, please contact Robert Whitehill, Chair of Fox Rothschild’s Immigration Group at 412.394.5595 or [rwhitehill@foxrothschild.com](mailto:rwhitehill@foxrothschild.com) or any member of our Immigration Practice or Labor & Employment Department.



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