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THE RIGHT RESPONSE AT THE RIGHT TIME

LEGAL ALERT



Legal Alert: Penalties Increase for Certain Immigration Violations

3/3/2008

Employers should be aware that, effective March 27, 2008, they face increased monetary penalties for the violation of certain immigration-related laws. The Department of Homeland Security (DHS) and the U.S. Attorney General issued a rule that adjusts for inflation the civil monetary penalties assessed or enforced by these two departments under the Immigration and Nationality Act (INA). This is the first increase in the civil monetary penalties since 1999 and results in an approximately 25% increase over the current penalties.

The increased penalty amounts are effective March 27, 2008 and apply only to violations that occur after that date.

- **Hiring, Recruiting and Referral Sanctions:** Under the current provisions, the penalty for knowingly hiring, recruiting or referring undocumented workers ranges from \$275 to \$2,200 per individual for a first offense, increasing to a maximum of \$11,000 in the event of three or more prior violations. Under the new provisions, the penalty range will increase to \$375 to \$3,200 for a first offense, up to a maximum of \$16,000 for multiple prior violations.
- **Employment of Undocumented Workers:** Under the current provisions, the penalty for the knowing employment of undocumented workers ranges from \$275 to \$2,200 per person for a first offense, increasing to a maximum of \$11,000 in the event of three or more prior violations. Under the new provisions, the penalty range will increase to \$375 to \$3,200 for a first offense, up to a maximum of \$16,000 for multiple prior violations.
- **Form I-9 “Paperwork Violations”:** The penalties for Form I-9 “paperwork violations,” including failure to properly complete the Form I-9 or failure to retain the Form I-9 for the required period of time, will remain at the current rate of \$110 to \$1,100 per violation. These penalties remain unchanged because they were below the threshold for an inflation adjustment under the relevant law.
- **Unfair Immigration-Related Employment Practices:** Under the current provisions, penalties for unfair immigration-related employment practices, such as discrimination against job applicants or employees based on nationality or citizenship status, range from \$275 to \$2,200 per act for a first offense, increasing to a maximum of \$11,000 in the event of three or more prior violations. Under the new provisions, the penalty range will increase to \$375 to \$3,200 for a first offense, up to a maximum of \$16,000 for multiple prior violations. However, the penalties for “document abuse,” refusal to accept permissible documents presented by an employee in compliance with

the Form I-9 requirements, will remain at the current range of \$110 to \$1,100 per violation.

Employers' Bottom Line:

The increase in civil penalty provisions provides yet another reason for employers to ensure they are in compliance with employment-related immigration requirements. If you have any questions regarding these penalty provisions or other employment related immigration issues, please contact any member of Ford & Harrison's Business Immigration Practice Group or Charles Roach, a partner in our Minneapolis office at croach@fordharrison.com or 612-486-1631.