

# Practical Briefs

Legal Updates for Today's Proactive Manager

VOLUME 1, ISSUE 6

SEPTEMBER 1, 2009

UPCOMING  
COMMUNITY EVENTS:

## *E-Verify—What it Means for Federal Contractors and Subcontractors*

U.S. Department of Homeland Security Secretary Janet Napolitano recently confirmed the implementation of regulations to require almost all federal contractors and subcontractors to register with and use the federal "E-Verify" program. The rule has been delayed several times by the current and former administrations, and a lawsuit challenging the new regulations is also pending in federal court. However, it appears the regulations will finally become effective on September 8, 2009.

The E-Verify program is an Internet based system that allows participating employers to verify the employment eligibility of newly hired employees. Currently, enrollment in the system is voluntary (unless your company operates in a state where state registration is required), but the regulations scheduled to take effect on September 8, 2009 will change that. Under the new regulations, the government will only award federal contracts to those employers who are registered and use the system to check the work eligibility of their employees. Federal contracts awarded after September 8, 2009 will include the Federal Acquisition Regulation (FAR) E-Verify clause.

Under the final rule, employers are required to enroll in E-Verify if and when they are awarded a federal contract or subcontract that requires participation in E-Verify as a term of the contract. If a company chooses to enroll in E-Verify prior to being required to do so by the new regulations, it may do so. However, the rules are different for those companies that have not been awarded a federal contract with the FAR E-Verify clause. Companies that do not have a contract with the FAR E-Verify clause are only allowed to verify the work authorization of new hires. Conversely, those who are required to enroll as a federal contractor (or subcontractor) after September 8, 2009, will be required to verify work authorization of new hires AND existing employees who perform work under the applicable federal contract(s). Companies enrolled in E-Verify as federal contractors must also complete a federal contractor tutorial that explains the new policies and features that are unique to federal contractors. Subcontractors on federal contracts must independently register and use E-Verify - they cannot rely upon their general contractor's registration.

Companies that are not subject to the federal contractor registration requirements must also be mindful of the laws in the states in which they operate. Many states now also require registration, including the southeastern states of Georgia, Mississippi, and South Carolina.

What if your business is not required to use E-Verify - should you enroll? Before making that decision, you should be aware of the obligations imposed by the E-Verify Memorandum of Understanding ("MOU") required between your business and the feds. In addition to notice requirements, required training, and other measures, the MOU requires the participating employer to make its employee I-9 and E-Verify records available to the Department during on-site visits. Strict rules must also be followed for completion of Forms I-9 and E-Verify submissions.

If you have additional questions or if you would like assistance with an internal audit of your company's I-9 files and policies prior to registration with the E-Verify system, please contact one of our attorneys for assistance.

## **H-1Bs Still Available for Fiscal Year Beginning October 1, 2009**

Is your business seeking to employ foreign national workers in an H-1B "specialty occupation"? Specialty occupations are those positions that require theoretical or technical expertise in a specialized field and a bachelor's degree or its equivalent, including, but not limited to architects, engineers, computer programmers, accountants, and doctors. H-1B visas are still available for the 2010 fiscal year (beginning October 1, 2009), but businesses should act quickly before these are all gone. If you need assistance in applying for an H-1B or other temporary or permanent work visa for a worker in your business, please contact us for details and assistance.

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**"CHANGE IS COMING"**

**EMPLOYMENT AND**

**IMMIGRATION LAW**

**UPDATE**

On September 22, 2009, our attorneys will present an immigration and employment law update at this year's "Change is Coming" program, sponsored by the West Alabama Chamber of Commerce. The complete registration form with more details is available on our website, [www.adgloballaw.com](http://www.adgloballaw.com), and on the Chamber of Commerce's website, [www.tuscaloosachamber.com](http://www.tuscaloosachamber.com). We look forward to seeing you there.

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FREE BACKGROUND INFORMATION AVAILABLE UPON REQUEST

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# ICE Raids and Audits Continue . . . Is Your Business Prepared?

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It is a scene that has become more and more common under the increased worksite enforcement agenda of Immigration and Customs Enforcement ("ICE") - federal ICE agents swarm an employer's building with warrants and arrest workers along with members of company management. Federal indictments for company management, deportation of unauthorized workers, and seizure of company assets soon follow.

ICE Assistant Secretary John Morton recently confirmed that "ICE will continue to investigate and find employers who flout our laws and hire illegal labor, in order to reduce the demand for illegal employment and protect employment opportunities for the nation's lawful workforce." Below are just a few examples of high profile worksite raids and prosecutions:

1. IFCO Systems, a pallet manufacturing company and the subject of one of the largest worksite enforcement raids, recently settled with the government and agreed to pay **\$20.7 million** in civil forfeitures and fines for employing illegal workers at its plants. The charges stemmed from a worksite raid in April 2006 when ICE agents arrested almost 1,200 illegal aliens working at IFCO plants in 26 states.

2. In April 2008, ICE raided Shipley Do-Nut Flour and Supply Company's office and warehouse complex in Houston. Dozens of ICE vehicles and government helicopters surrounded the business, and a number of workers were taken away in handcuffs. Later reports revealed that the raid followed tips from disgruntled workers at the plant. The company's owner and three of its managers pleaded guilty to hiring and employing illegal workers, and they were sentenced to six months probation and ordered to pay fines. The company was also sentenced to three years' of court supervision, and it was ordered to pay a \$250,000 fine. That fine is **in addition to the \$1.3 million** the company has already paid to ICE in lieu of forfeiture of company houses where the illegal workers reportedly lived.

3. A human resource manager and plant manager of a South Carolina-based Columbia Farms chicken processing plant were recently indicted on federal charges for their alleged role in knowingly hiring illegal workers at the plant. The company was also formally charged with 29 counts of knowingly hiring illegal workers. The company denies the charges and the managers have pleaded not guilty. The charges stem from a worksite raid

in October 2008, where federal agents raided the plant and detained over 300 suspected illegal workers. Several plant supervisors have already been sentenced and ordered deported. The raid may have stemmed from a South Carolina Workers' Compensation Commission's review of the company's practices in reporting worker injuries at the Greenville, South Carolina plant.

4. Michael Bianco, Inc., a large military contractor, was the subject of a worksite raid in March 2007. The company pleaded guilty to 18 counts of knowingly hiring illegal workers, and the company's president was sentenced to a year and a day in prison and ordered to pay \$30,000 in fines.

The government is also using worksite audits to crack down on illegal hiring. On July 1, 2009, ICE issued audit notices to 652 businesses nationwide. The number of notices issued on that single day is substantially more than the number issued overall in the prior fiscal year. ICE officials have confirmed that audits will continue and increase in scope and veracity, and employers found to be in violation of the laws will be penalized.

Employers of every size are required by federal immigration laws to complete and retain a Form I-9 for each individual they hire in the U.S. US Citizenship and Immigration Services recently released an updated Form I-9. The updated Form reflects a revision date of 8/7/2009 and an expiration date of 8/31/2012. A "fillable" pdf format is available at [www.uscis.gov](http://www.uscis.gov).

Employers who expect a visit by ICE should have in order at least the following: all required Forms I-9; employee hire and termination databases or spreadsheets; payroll data; I-9 policies; and company organizational charts or similar information. Should ICE perform an audit at a worksite and determine that a business has not complied with I-9 requirements or has hired illegal workers, the penalties can be severe.

Businesses should heed the recent warnings from the federal government regarding its continued focus on employers and enforcement of immigration laws. Don't wait until ICE comes knocking on your door - now is the time to review and update your I-9 files and policies. Otherwise, your business could be ICE's next headline. Please contact one of our attorneys at (205) 210-4713 for assistance with an internal audit and review.

## Proactive Managers— Effective and Practical Workshops for Your Business

Today's business owners and managers are faced with difficult decisions on a daily basis, and many of those decisions can have critical financial and legal implications. Business owners and managers often engage their full management team in planning to prevent legal pitfalls. Armstrong & Desai provides practical guidance on a variety of legal issues that can help ease the burden on you and your business. We will accommodate your busy schedule with topic-specific presentations in a variety of available formats, including live seminar or workshop instruction, webinars, audio conferencing, or "on-site" company specific review and discussion. We are also happy to work with you to create a tailored presentation that meets your company's specific needs. We also routinely present to professional organizations, civic organizations, and other membership clubs upon request.

Please visit our website at [www.adgloballaw.com](http://www.adgloballaw.com) for additional details and a list of workshops and presentations offered.



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