

Weathering the Big Chill: ICE and States Crack Down on Illegal Workers



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You see it on the front page, the nightly newscast; the controversial and highly charged issue of illegal immigration has taken over the headlines. Immigration and Customs Enforcement (ICE) is stepping up patrols. Earlier this year, ICE announced it is investigating 1,000 businesses across all 50 states. And ICE isn't the only one cracking down.

Several states have passed legislation requiring employers to verify a worker's eligibility using a federal database. In all of the uproar, one thing is clear. Employers need to understand the risks they face.

Costly investigations, penalties and fines can be a burden for some businesses and a death sentence for others. So, it is imperative that companies ensure that all employee documentation is completed correctly and all files are up to date. Employers must be diligent in verifying workers' eligibility. Yearly I-9 compliance audits to ensure all files are current can help avoid any issues that may arise.

Think Your Business is in the Clear?

Think again. ICE randomly chooses to look at 2,500 businesses each year for Immigration and Reform Act violations. Even if you are not knowingly harboring an illegal worker at your business, each mistake on an I-9 immigration status form is penalized by fines between \$100 and \$1000 per violation (each mistake on the same form counts as a separate violation).

E-Verify

One way to ensure a worker's eligibility is at the heart of a national debate right now. E-Verify is an internet-based system to determine the immigration status of an employee. It's basically an electronic I-9. As mentioned earlier, several states have adopted legislation requiring employers to use E-Verify and currently there is a bill in the U.S. House of Representatives that would require all employers to use the system.

"The new state laws are efforts at insuring compliance. Companies should be doing this anyway. E-Verify may not necessarily avoid an audit, but it may avoid fines and penalties," said Christopher Ziemba, Managing Claims Attorney at Monitor Liability Managers, LLC.

To further the point, one could say the fact that so many states are adopting immigration laws points to the importance of maintaining your records and staying diligent regardless of where you live.

What Can Happen?

In July of 2009 a company received a "Notice of Inspection" from ICE, seeking to conduct a review of its Forms I-9.

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The company believed it was the result of a tip from an anonymous “whistleblower.” The company hired a firm that specializes in I-9 audits. The firm’s review revealed that 13 undocumented immigrants were working there. The employer terminated the workers as part of its audit, but ICE sought a hearing to determine the amount and extent of fines to the company. The defense costs in that case were approximately \$25,000.

It’s also important to note that while any company is at risk, some may be more at risk than others. ICE is known to target certain industries, such as restaurant and hospitality businesses and companies that employ seasonal workers, like packing plants, vegetable farms or landscaping companies.

Furthermore, with the Federal budget deficit taking its toll, agencies like ICE are on the lookout for revenue wherever they can find it and that could mean steep fines for your organization.

So What Can You Do?

The key is to make sure you and your company are protected. As mentioned, maintaining completed and verified documentation on each employee is paramount. To ensure this, employers should schedule a yearly I-9 compliance audit with a law firm that specializes in immigration law. This can help uncover any problems that could lead to ICE sanctions.

“You may think you’re doing everything right, but you still may not be compliant,” said Ziembra. “An event as innocuous as the hiring of a new HR manager can lead to the discovery that the former HR manager did not keep accurate I-9 Forms”.

Why Monitor’s Illegal Immigration Endorsement Can Help You

Dealing with increasingly aggressive tactics by ICE can add up quickly with attorney and court fees, not to mention the costs of investigation and fact gathering. Even if the allegations prove to be false, defense costs can be staggering. A small-to-midsize business can expect the costs of managing an ICE investigation to range anywhere from \$10,000 to \$20,000.

The Illegal Alien Investigation Proceeding Costs of Defense Sublimit is available by endorsement with Monitor’s Employment Practices Liability (EPL) Insurance. It offers up to \$25,000 to cover costs of defense for criminal investigations brought by any government agency for alleged hiring or harboring of illegal aliens.

You will also have access to Monitor’s team of experienced professionals and legal counsel to help your business weather the storm.

Get the coverage before you need it.

Ask your agent for a quote from Monitor.

Find out more about Monitor’s EPL coverage and the Illegal Immigration Endorsement at www.monitorliability.com/epl.html.