

Labor and Employment Client Service Group

To: Our Clients and Friends

December 5, 2012

Employers Must Maintain Accurate I-9 Forms to Avoid Penalties

All employers are required to have an I-9 on file for employees to verify their identity and authorization to work in the United States. The Department of Homeland Security's Immigration and Customs Enforcement agency (ICE) can demand an inspection of any employer's I-9 file upon three days notice. Since 2009, ICE has drastically increased the number of Form I-9 inspections, resulting in fines of approximately \$100 million. Indeed, ICE now has more staffers to conduct I-9 inspections, than the IRS has auditors.

Civil fines for Form I-9 violations can range from \$110 to \$1,100 per violation, with even higher civil penalties and potential criminal charges for knowingly hiring or employing unauthorized workers. The Form I-9 violations can be for seemingly simple errors such as not checking a box, not dating the Form, or not writing in all driver's license information. ICE inspections normally look at three years of Forms I-9, including for past and present employees. Small businesses with high employee turnover could be required to maintain hundreds of Forms I-9, which increases the potential fine.

The more I-9s that have errors, the higher per violation penalty an employer will face. For example, if ICE reviews 200 I-9s and finds that 50% have errors, the employer will pay \$935 per violation and a total fine of \$93,500. However, if ICE only finds that 9% have errors, the fine would be reduced to \$110 per violation and likely an employer would only be issued a warning. ICE also considers five factors to either increase or mitigate fine amounts: the size of the business, good faith effort to comply, seriousness of violation, whether the violation involved unauthorized workers and history of previous violations. ICE considers the best evidence of good faith to be employer audits led by outside counsel.

Employers should conduct annual internal audits and train staff thoroughly on how to complete the Forms. In 2013, we anticipate that the federal government will require employers to begin using a new version of Form I-9. The new Form I-9 will be substantially different from the previous version and employees should be trained on proper completion. Bryan Cave has trained lawyers to assist with all aspects of I-9 audits and inspections.

For information about this Labor and Employment Bulletin, please contact the following attorneys or your regular Bryan Cave LLP contact.

Jay Zweig - jay.zweig@bryancave.com or 602-364-7300

Catherine Pearson - catherine.pearson@bryancave.com or 602-364-7294

Melissa Costello - melissa.costello@bryancave.com or 602-364-7064

Shayna Fernandez - shayna.fernandez@bryancave.com or 602-364-7307