

Alerts and Updates

FY2010 H-1B CAP REACHED AND OTHER IMMIGRATION LAW UPDATES

December 28, 2009

FY2010 H-1B Cap Reached

The United States Citizenship and Immigration Services (USCIS) has announced that as of December 21, 2009, sufficient H-1B petitions were received to reach the statutory cap for Fiscal Year 2010. USCIS had previously announced that it had received more than 20,000 H-1B petitions on behalf of persons exempt from the cap under the advanced degree exemption. In accordance with USCIS policy, all H-1B petitions subject to the cap that were received on December 21, 2009 will be subject to a computer-generated, random-selection process. Any H-1B petitions subject to the cap and received after December 21, 2009 will be rejected and returned.

H-1B petition extensions or petitions filed for a change of employer are not subject to the cap. H-1B petitions filed on behalf of individuals who have held H-1B status at any time during the last six years are also not subject to the cap. Additionally, petitions filed by an institution of higher education or a related or affiliated nonprofit entity, or by a nonprofit research organization or governmental research organization, are also exempt from the annual cap. It must be noted that H-1B1 visas are still available for nationals of Chile and Singapore, under Free Trade Agreements with those countries.

USCIS will begin accepting H-1B petitions for FY2011 on April 1, 2010. The start date for FY2011 petitions can be no earlier than October 1, 2010. It is likely that the FY2011 cap will be reached very quickly; employers should consider beginning the process for cap-subject FY2011 H-1B petitions as early as possible.

1,000 New I-9 Audit Notices Sent

In November, U.S. Immigration and Customs Enforcement (ICE) announced 1,000 new I-9 audits had been initiated and penalties for employer violations had increased. The new audits were in addition to 654 that were announced in July and represents a three-fold increase over the 503 audits conducted in all of FY2008 (October 1, 2007 to September 30, 2008). ICE Assistant Secretary John Morton also announced the results of the 654 audits conducted over the summer, indicating that they had resulted in 61 Notices of Intent to Fine, encompassing \$2.3 million in fines, 267 business still under investigation and 326 closed cases after employers were found to be in compliance.

Since the new ICE worksite priorities were announced in April 2009, the agency has dramatically stepped up enforcement against employers, with an emphasis on critical infrastructure sites. Since April 30, 2009, ICE has debarred 45 businesses from federal contracting and other federal programs on account of I-9 and other violations, levied more than \$15.8 million in fines, and has initiated 1,897 enforcement cases against employers.

Monetary penalties for knowingly hiring an unauthorized worker and for continuing to employ an unauthorized worker now range from \$375 to \$16,000 per violation. Penalties for substantive violations, including failing to produce I-9 forms when requested, range from \$110 to \$1,100 per occurrence. To determine penalty amounts, ICE considers five factors: (1) the size of the business; (2) good faith efforts at compliance; (3) seriousness of the violations; (4) whether the violation involved unauthorized workers; and (5) previous history of violations.

To protect themselves, employers should consider conducting routine self-audits of their I-9 forms, reviewing and updating their I-9 policies, and conducting regular training of staff involved in the I-9 process. If employers receive I-9 audit notices, they should consider immediately seeking legal counsel to assist them in responding to the notice.

E-Verify Back on the Map in Illinois

On January 1, 2010, the ban on the use of E-Verify in Illinois will be lifted. The new law, SB1133, amends the Illinois Privacy in the Workplace Act and was signed into law by Governor Quinn in August 2009. This change comes after several years of litigation and confusion for Illinois employers subject to federal E-Verify requirements. The new law does not mandate the use of E-Verify for any particular employers in the state, but eliminates the penalties for its usage.

For Further Information

For more information about any of the subjects covered in this alert, please contact any of the [attorneys](#) in our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.