

Abercrombie and Fitch Fined After an I-9 Audit
or
A Million Good Reasons Not to Play BINGO With ICE

By Gregory D. Stobbe, JD SPHR

The U.S. Immigration and Customs Enforcement's (ICE) Office of Homeland Security Investigations (HSI) announced in September of 2010, that they had reached a settlement in excess of \$1,000,000 with clothing retailer Abercrombie & Fitch (A & F). This action came as the result of an I-9 inspection conducted by ICE in 2008, which focused on "technology related deficiencies" in A & F's electronic I-9 records system.

Of particular interest is that although Abercrombie & Fitch ***had not been found to have knowingly hired any unauthorized aliens***, it was determined that A & F had violated provisions of the Immigration and Nationality Act (INA). The INA requires employers to verify the eligibility of its workers through the Form I-9 process. ***The settlement arose strictly from the number of technology related deficiencies in the A & F electronic I-9 verification process.***

"Employers are responsible not only for the people they hire but also for the internal systems they choose to utilize to manage their employment process and those systems must result in effective compliance," said Brian Moskowitz, special agent in charge of ICE HSI for Ohio and Michigan. Moskowitz went on to state - "We are pleased to see Abercrombie working diligently to complete the implementation of an effective compliance system however, we know that there are other companies who are not doing so. ***This settlement should serve as a warning to other companies that may not yet take the employment verification process seriously or provide the attention it warrants.***" (Emphasis mine)

The Immigration and Reform Act of 1986 requires employers to complete and retain a Form I-9 for each individual they hire in the United States. The duty is on the employer to both review original and appropriate documentation, for identity and employment eligibility purposes. The standard is that these documents must reasonably appear to be genuine and relate to the person.

According to a September 28, 2010 ICE News Release - "...ICE has leveled a record number of civil and criminal penalties against employers who violate immigration laws. "Based on the nature and amount of the settlement fine in the A & F case, the prudent employer may wish to proactively review not only the integrity of their existing I-9 Forms, but also their current I-9 process. This should especially be the case if they have implemented, or are considering the implementation of, any supporting electronic database system. If ICE "invites" your organization to a game of BINGO and calls out "I-9", you want to be in the position to have covered more than just your card.

Stay Tuned...

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