

Preparing For Immigration Reform Now

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On Thursday, May 25, 2006, in a historic vote, the U. S. Senate passed the most significant immigration reform law in 20 years. This comprehensive immigration reform bill addresses 3 difficult problems: 1) securing our borders; 2) creating a temporary guest worker program to address labor shortages; and 3) what to do with the estimated 12 million undocumented immigrants in the country.

The bill now goes to the House/Senate conference committee where it must be reconciled with the House bill which was past last December. The House bill only deals with the first issue: "securing our borders". It is "enforcement only". The rationale behind it is that first we need to reassert control over our borders. It proposes to build a 700 mile fence along the border with Mexico, adding 6,000 new border patrol agents, and it makes "unlawful presence in the US" into a felony. It also calls for more "interior enforcement" that is cracking down on employers, who employ undocumented workers. It raises the maximum fine for knowingly employing an undocumented worker from \$10,000 to \$40,000 and it includes criminal sanctions for repeat violators. The Senate version also calls for stiffer enforcement in the workplace, doubling the penalties for employers from \$10,000 to \$20,000.

The Bush Administration has proposed two new reforms to insure that employers are employing workers who are authorized to work in the US. First, they have proposed that employers be allowed to keep I-9 employment authorization forms electronically in digitized form. This would save space and also aid in searching them. Second, they have proposed new procedures for employers setting forth their duties and responsibilities when they receive "Social Security mismatch" letters, indicating that their employees social security numbers and names do not match with their account. The regulations will establish safe harbor procedures for employers. However, they will also target employers for enforcement procedures if they repeatedly receive the mismatch letters. Hopefully, Immigration reform will be approved this year and they will be able to legalize those workers whose documents are not appropriate. However, if a new law creating a temporary worker is not approved, employers must be prepared to deal with the increased workplace enforcement which is expected.

Regardless of what the final immigration reform bill looks like or even if no bill passes at all, one thing is certain - there will be increased enforcement of employer sanctions. Just as the IRS made all employers into deputy tax collectors, Immigration is making employers deputy immigration inspectors, by requiring them to complete form I-9 for all employees and also by now requiring them to verify the accuracy of their employees' social security numbers when they receive "mismatch letters" from the social security administration. The immigration reform bill has proposed the creation of an electronic data base for employers to verify their employee's social security numbers. Enforcement of employer sanctions has already increased and will increase substantially.

At this time, it is uncertain what the final immigration reform bill will look like or whether it will pass at all this year. However, one thing is certain - there will be more enforcement in the workplace, with or without a new law. Right now, due to all of the political pressure, Immigration has already started to enforce the existing laws more vigorously. Therefore, it is incumbent upon all employers to conduct a "preventative internal I-9 audit" now, before they are audited by the government. Employers are required by law to complete a Form I-9, Employment Verification Form, for all of their employees at the time of hire, certifying that they have reviewed the employees documents and that they are authorized to work in the US. This is required for all employees, even native born US citizens. Further, if an employee's work authorization expires, the employer is required to fill out a new I-9 form with the updated information. Failure to do so may subject the employer to civil and criminal penalties.

For further information on conducting a preventative internal I-9 compliance audit, contact Eli M. Kantor at (310) 274-8216; ekantor@beverlyhillsmigrationlaw.com or dreli173@aol.com; or go to our website at www.beverlyhillsmigrationlaw.com or our blog at www.beverlyhillsmigrationlaw.blogspot.com I am an attorney in private practice in Beverly Hills, California. I represent employers in all aspects of labor and employment law, including cases involving wrongful discharge litigation, employment discrimination, sexual harassment, wage and hour laws, independent contractor status, employee handbooks and personnel practices, NLRB representation elections, union contract negotiation and grievance/arbitration, ERISA and Pension Trust Fund matters, construction labor law, entertainment labor law and immigration law. I received my B.A. Magna Cum Laude from U.C.L.A. in 1973 and my J.D. in 1976 from Loyola Law School. I was a Trial Attorney at Region 21 of the National Labor Relations Board from 1976-1980. Since 1981, I have been in private practice in Beverly Hills, specializing in Labor and Employment Law. I have lectured at U.C.L.A. Extension; at the U.C.L.A. Institute of Industrial Relations, and at numerous continuing education programs on employment related topics. I have conducted numerous seminars on Sexual Harassment Prevention Training.