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Immigration Update: Department of Homeland Security Announces An Increase In Civil Fines Against Employers for Immigration Violations

By Nancy-Jo Merritt and Matthew J. Martinez

Recently, Attorney General Michael B. Mukasey announced higher civil fines against employers who violate federal immigration laws. Under the new rule, civil fines for the knowing hire or the continuing hire with knowledge of unauthorized aliens, unfair immigration-related employment practices, paperwork violations, document abuse, and document fraud will increase by as much as \$5,000. The new rule will take effect on March 27, 2008.

Under the Immigration and Nationality Act, employers who violate employment verification requirements are subject to civil monetary penalties. Employers may be fined under the Act for knowingly employing unauthorized aliens and for other violations, including failure to comply with the requirements relating to employment eligibility verification forms, wrongful discrimination against job applicants or employees on the basis of nationality or citizenship, and immigration-related documents. For each of these violations, an employer has a right to a hearing before an Administrative Law Judge in the Executive Office for Immigration Review.

The new rule adjusts civil penalties upward for inflation. Because the penalty level was last adjusted in 1999, the average adjustment is approximately 25%. Under the specific rounding mechanism of the law, the minimum penalty for "knowing employment" of an unauthorized alien increases from \$275 to \$375, while the maximum penalty for a first violation increases from \$2,200 to \$3,200. The biggest increase raises the maximum civil penalty for multiple violations from the current \$11,000 to \$16,000. These penalties are assessed on a per-alien basis, so if an employer knowingly employed, or continued to employ, five unauthorized aliens, the result could be five separate fines.

A chart covering a complete sequence of fines is available in the Federal Register, Vol. 73, No. 38 (Feb. 26, 2008), p.p. 10133-10134.

The increase in fine level is especially timely from the federal government's point of view because Immigration and Customs Enforcement (ICE) has re-instituted activity, abandoned in the late 1990s, of inspecting employer I-9s. The I-9 Notice of Inspection will be accompanied by an administrative subpoena requesting extensive additional information from the employer. Some of the requested information may be outside the jurisdiction of the Immigration and Nationality Act, so it is wise to carefully consider the relevance of ICE requests for additional documentation beyond the I-9s themselves.

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Please feel free to call us if you have any questions about a Notice of Inspection, and always be sure to insist that ICE provide you with three days prior notice in the event of an inspection.

Nancy-Jo Merritt focuses her practice in immigration law and has nearly three decades of experience representing domestic and international companies with issues concerning foreign national employees and business immigration matters. She provides strategic counseling to clients and assists employers in developing compliance programs. She earned her B.A., (1964) M.A., (1974) J.D., (1978) from Arizona State University.

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