

Monday, March 24, 2008

Labor and Employment Update: Are Your Employees Verified?

By Anthony B. Golden and Nancy-Jo Merritt

In the 2007 legislative session, the Nevada Legislature enacted Assembly Bill 383 to address immigration issues, primarily human trafficking. Although dependent on prior federal prosecution, AB 383 (NRS 360.796) threatens Nevada employers with potentially significant administrative fines or even revocation of state business licenses for employing "unauthorized aliens."

For a fine to be imposed, three events must occur:

- Immigration and Customs Enforcement (ICE) [although the statute refers to a final decision and order by the United States Attorney General, responsibilities for enforcing U.S.C. §1324a now rest with the Department of Homeland Security and its enforcement arm, ICE] must have found that the holder of a Nevada state business license has engaged in the unlawful hiring or employment of an unauthorized alien, pursuant to U.S.C. §1324a(e);
- The Nevada Tax Commission "shall" hold a hearing and determine whether to take action against the employer;
- The Nevada Tax Commission must determine that the employer violated the federal law "willfully, flagrantly, or otherwise egregiously."

Upon the occurrence of those three events, the Nevada Tax Commission "shall impose" an administrative fine in an amount established by the Commission, and may suspend or revoke the state business license of the misbehaving employer.

Thus, the State of Nevada has joined numerous other states in imposing a local layer of enforcement on employers who have violated the federal statute punishing unlawful employment of aliens. Nevada has wisely not followed other states by attempting to become the primary enforcer of unauthorized employment, but adds additional punishment only after the federal government has determined that there is a violation. The Nevada Tax Commission will then determine the egregiousness of the violation, which can lead to suspension of business licenses.

An interesting aspect of AB383 is that it encourages employers to ensure the validity of employee social security numbers via the Social Security Administration's Social Security Number Verification System (SSNVS). The employer's copy of the print-out of the SSA verification may be used as prima facie evidence that an otherwise "unauthorized" hire violation was not willful, flagrant or otherwise egregious.

It is important to note that the SSNVS system may not be used to verify employment authorization; it is available for the purpose of confirming that the SSN provided by the employee is accurate.

quick links

- [Labor and Employment Practice](#)
- [Immigration Practice](#)
- [Unsubscribe](#)
- [Acrobat Reader](#)

Phoenix
3003 N. Central Ave.
Suite 2600
Phoenix, AZ 85012
(602) 916-5000

Tucson
One S. Church Ave.
Suite 1000
Tucson, AZ 85701
(520) 879-6800

Nogales
420 W. Mariposa Rd.
Suite 200
Nogales, AZ 85621
(520) 281-3480

Las Vegas
300 S. Fourth St.
Suite 1400
Las Vegas, NV 89101
(702) 692-8000

Denver
1700 Lincoln
Suite 2900
Denver, CO 80203
(303) 291-3200

The primary and sole employment verification tool is the federal government Form I-9, which may be augmented by the Federal Government's E-Verify system.

While the E-Verify System is wholly voluntary under the federal rules, several states have attempted to require employers to use the E-Verify system to confirm that the information provided in the I-9 process is correct. Information on the E-Verify system is available at <http://www.uscis.gov/files/pressrelease/EVerifyFS25Sep07.pdf>.

Given the increased level of enforcement by both the federal and several state governments, AB 383 is a reminder to employers that they are enforcement targets and it is a good time to review their employment verification procedures.

Anthony B. Golden focuses his practice in iin the areas of commercial litigation, business and finance, and real estate. Before joining Fennemore Craig, Mr. Golden worked as a judicial law clerk for the Honorable Nancy A. Becker at the Supreme Court of Nevada. He earned his B.S. (2001) from the University of Redlands and his J.D. (2004) from the University of San Diego School of Law.

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.



Anthony B. Golden
Associate
702.692.8005
agolden@fclaw.com



Nancy-Jo Merritt
Director
602.916.5411
nmerritt@fclaw.com