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U.S. Government announces plans to increase the civil fines against employers who are caught violating federal immigration laws.

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Global Edition

A Littler Mendelson Newsletter specifically for the Global Industry

DHS Jacking Up Fines for Employing Illegal Aliens

By Jorge Lopez and Lisa A. Cottle

The cost of doing business just got higher. In a joint briefing with Secretary of Homeland Security Michael Chertoff, Attorney General Michael B. Mukasey announced the government's plan to increase civil fines against employers caught violating federal immigration laws. The new rates were published in the Federal Register on February 26, 2008.

As most employers in this country are all too aware these days, the government is entitled to impose monetary fines for violations of the laws governing the Form I-9 and issues related to it. These fines may be incurred for everything from defects in the form itself, such as failing to fill in the employer's address, to the knowing employment of an unauthorized alien. Indeed, such knowing employment can be actual or constructive, such as where the employer had an obligation to re-verify an individual's employment authorization and failed to do so. The increased fines apply in situations where the employer knowingly employs individuals without proper work authorization documentation.

In a February 22, 2008 press release from the U.S. Department of Justice, Attorney General Mukasey stated that the penalty rates were being "adjusted for inflation." He also noted that the average adjustment amounted to about twenty-five percent.

To this end, under the new regulations, the minimum penalty for the knowing employment of an unauthorized alien has increased by \$100, from \$275 to \$375. The maximum civil penalty has increased

\$1,000, from \$2,200 to \$3,200. The biggest increase is for employers with multiple violations, whose maximum fines have been boosted from \$11,000 to \$16,000. These higher rates will take effect March 27, 2008.

Coupled with the explosion of enforcement activity in 2008, these increased penalty rates will mean big costs for U.S. employers wrangling with Immigration and Customs Enforcement (ICE) investigators. This is all the more reason for employers to be pro-active with their I-9 policy and internal I-9 audit procedures.

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