A Timely Analysis of Legal Developments

ASAP®

In This Issue:

December 2008

A record-setting settlement of claims alleging the knowing employment of illegal aliens demonstrates the government's intent to enforce immigration law through interagency task force investigations.

Record Worksite Enforcement Settlement Sends Message to Employers of Illegal Aliens

By David C. Whitlock

On December 19, 2008, Immigration and Customs Enforcement (ICE) announced that IFCO Systems North America (IFCO), the nation's largest pallet management services company, had agreed to a record $20.7 million settlement of claims alleging the knowing employment of illegal aliens. This settlement agreement resolves only the corporate liability and does not encompass pending criminal cases against IFCO managers and employees. To date, nine managers and employees have pled guilty to various criminal charges, and four managers are awaiting trial in New York.

The government investigation began after ICE received a tip from an IFCO employee that illegal alien workers at IFCO's Albany, NY plant were seen shredding their W-2 forms. In April 2006, after a 14-month investigation, ICE and several other government agencies conducted a massive worksite raid at over 40 IFCO plants in 26 states, resulting in the apprehension of over 1,100 illegal workers. The government's investigation included analysis of the company's payroll and tax data, no-match correspondence received from the Social Security Administration (SSA), and the company's response (or lack of it) to that correspondence.

The settlement also includes $2.6 million in back pay and penalties relating to overtime violations under the Fair Labor Standards Act. The remaining amount will be paid out over four years, and these funds will be used for further worksite enforcement investigations. IFCO also agreed to enroll in and use E-Verify for all new hires companywide.

This settlement demonstrates the government's zeal for enforcing existing immigration laws and cracking down on illegal employment. The IFCO case was used by ICE to confirm its new and more forceful enforcement policies. The case is significant for at least two reasons. First, it reflects increased use of interagency investigative resources, including in this case, ICE, IRS, SSA, and DOL, in addition to state law enforcement entities. Second, the amount of the settlement reaffirms the government's intent to go after the corporation, not just individuals, aggressively in an effort to make the adverse financial consequences of illegal employment even more severe.

Recommendations

The size of the settlement and the fact that it targets only the corporate liability suggest that employers must be extremely vigilant to avoid severe financial penalties. In addition to providing training on proper employment practices, prudent employers will ensure their compliance with I-9 requirements. Similarly, prudent employers will take appropriate steps in response to receipt of government information indicating that workers may lack authorization to work. Finally, employers in industries where there is greater enforcement may wish to consider voluntarily enrolling in E-Verify.

With respect to I-9 compliance, all employers should note that an interim I-9 form will be required as of February 2, 2009, pending final regulations. The new version of the form and a revised *Handbook for Employers* should be available soon. In addition to a revised form, employers will no longer be able to accept expired documents or Forms I-688 (Temporary Resident Card), I-688A (Employment Authorization Card), or I-688B (Employment Authorization Card). See Littler's December 2008 ASAP, *USCIS Issues Interim Final Rule on I-9 Employment Verification*.

Employers with federal contracts in excess of $100,000 should also note that the revisions to the Federal Acquisition Regulation requiring enrollment and use of E-Verify are scheduled to take effect on January 15, 2009. After that date, federal contracting officers will likely begin requiring E-Verify enrollment as part of new, extended, or amended contracts. There remains a possibility that the effective date of the new requirements may be postponed as a result of a lawsuit seeking to enjoin implementation of the revised regulation.

For more information about any of these topics, please contact your Littler attorney or anyone in the Firm's Immigration and Global Migration Practice Group.

David C. Whitlock is a Shareholder in Littler's Atlanta office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Whitlock at dwhitlock@littler.com.