CLIENT ALERT: Employers Should Prepare for an Increase in I-9 Audits Under New Trump Administration Immigration Directives

On January 20, 2025, President Donald Trump issued an array of executive orders in an effort to dramatically reshape immigration policies in the United States. These policy directives are likely to result in a renewed focus on enforcement measures, such as I-9 audits, which may have a significant impact on employers. As a result, employers are reminded to take appropriate measures to ensure they are in compliance with I-9 requirements.

Employers in the U.S. are required to complete Form I-9s for every employee they hire, whether they are a citizen, permanent resident, or non-citizen. The U.S. Immigration and Customs Enforcement (ICE) agency, a branch of the U.S. Department of Homeland Security (DHS), has the authority to audit employers to ensure they are in compliance with I-9 requirements. If selected for an audit, an employer will have three business days to produce I-9 forms for either all or selected employees. ICE may also request supporting documentation for employees, such as copies of passports or other work authorization documents. Employers who fail to comply with Form I-9 verification requirements may be subject to civil fines and employers who engage in a practice of hiring or recruiting unauthorized aliens may be subject to criminal penalties.

In light of the Trump administration's aggressive position on immigration, it is anticipated that ICE could substantially increase the number of I-9 audits they conduct in the coming weeks and months. Accordingly, employers are encouraged to review their existing I-9 processes to ensure they are compliant and consistent. Additionally, employers should proactively conduct an internal audit by reviewing their I-9 records to ensure they have retained completed I-9s for their workforce and to correct any errors or omissions. ICE has published guidelines to help employers structure and implement internal audits. Employers should also consider enrolling in e-Verify as part of their I-9 process and confirm that any e-Verify service that is used is able to produce accurate copies of its employees' I-9s on demand.

In addition to I-9 audits, ICE is preparing to increase its number of raids to detain undocumented employees in target cities. During an ICE raid, ICE officers will present themselves at a worksite unannounced with a warrant to enter the premises to search for undocumented employees. Employers should similarly prepare their workforce for the possibility of ICE raids and develop a policy or action plan in case of a raid.

Employers are encouraged to contact their MBJ attorney with any questions about their I-9 practices and compliance efforts.

Shane R. Goodrich is an attorney with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666, or sgoodrich@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on

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