

CLIENT ALERT: Federal Immigration Officials to Target Employers – Immigration Enforcement Policy Change

In a significant change to its past policy, the United States Department of Homeland Security (“DHS”) announced that it will shift its enforcement efforts toward employers who knowingly hire undocumented workers. Under guidelines issued under the new administration, the DHS stated that United States Immigration and Customs Enforcement (“ICE”) will focus its resources in the worksite enforcement program on the criminal prosecution of employers who knowingly hire illegal workers.[1] DHS reported that “[o]f the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were employers.” These figures are certain to shift as ICE’s new enforcement strategy takes hold.

Employers must ensure that employees are eligible to work in the United States. Employers must obtain appropriate documentation required in Form I-9 for all newly hired employees to verify their identity and authorization to work legally within the United States. Employers may also consider utilizing the electronic employment eligibility system known as “E-Verify,” which is optional for most private employers, but may soon be required for government contractors.

Employers must be careful that they do not discriminate when making employment decisions. In particular, issues with national origin discrimination often arise when taking an adverse action against an individual because of that individual’s authorization to work within the United States. An employer that is concerned about the immigration status of a particular employee should consult an attorney before taking any adverse employment action.

For more information on employment eligibility compliance, E-Verify, or other employment matters, please contact your MBJ attorney.

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[1]Fact Sheet on Worksite Enforcement Strategy, U.S. Dep’t of Homeland Security (Apr. 30, 2009), <http://www.aila.org/content/default.aspx?docid=28757>.