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U.S. Immigration Raid of Idaho Employer Raises I-9 Compliance Issues

By Kara L. Heikkila

A Nampa, Idaho business was recently featured in the media when 16 employees were detained (in front of a television crew) in a U.S. Immigration and Customs Enforcement (“ICE”) raid. Newspapers reported that the employer was “stunned to learn that the employees, whose I-9 forms were completed as required at hire, were suspected of working illegally.” The scope and publicity of this raid serve as a reminder to all employers in Idaho of the federal government’s interest in compliance with national immigration laws as applied to employers.

The experience of this Idaho employer is not unusual. In January 2008, ICE announced a new initiative to increase, among other things, document inspections of employers. In March of this year, ICE increased penalties associated with the hiring of illegal workers, which now range from \$375 to \$16,000 per illegal worker.

While all employers are subject to and familiar with the documentation requirements associated with the hiring process and verification of employment eligibility through use of the I-9 forms, fewer employers are probably aware that the same federal law that requires this documentation also subjects employers to claims for discrimination for various violations associated with hiring and employment verification. The federal law is “delicately balanced to serve the goal of preventing unauthorized alien employment while avoiding discrimination against U.S. citizens and lawful aliens.” This “delicate balance” can be an impossible one to achieve.

Employers may not discriminate against an individual in any of the following four ways under federal law: 1) by conduct referred to as “document abuse,” 2) by discrimination based on citizenship, 3) by discrimination based on national origin (defined as the employee’s place of birth, the country of origin or from which their ancestor’s came, native language, accent, or perceptions of looking foreign), or 4) by retaliation. While the last three are generally familiar to employers and may be additionally protected under federal and state anti-discrimination laws, the concept of “document abuse” may be a new one to employers.

Examples of document abuse include requiring more documents than required by the I-9 process, requiring a particular document for I-9 verification, and “rejecting documents that reasonably appear to be genuine and belong to the employee presenting them.” The “delicate balance” of rejecting documents that appear false (or being subject to public raids and penalties for hiring illegal workers) and

rejecting documents that appear to be genuine (or being subject to penalties and lawsuits for discrimination) is a dilemma for all employers.

Employers and those completing I-9 forms and reviewing documentation are not expected to be document experts, nor are they required to establish the authenticity of any particular document. However, the “delicate balance” is a reminder that employers should assure those responsible for the employment eligibility process are appropriately trained and encouraged to seek agency and legal advice as necessary.