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Client Alert: DOJ Hikes Fines for Immigration Related Violations

Despite the numerous Immigration and Customs Enforcement (ICE) headlines, the last two years have brought a significant decrease in workplace audits: 3,127 audits in 2013 to 435 audits in 2015. Similarly, the fines during this time have dropped from \$9.5 million in 2013 to \$4.62 million in 2015. To put this in perspective, ICE assessed about \$31.2 million in fines as a result of over 9,000 worksite inspections between 2009 thru 2012. But it seems that this lull is about to come to an end.

On June 30, 2016, the U.S. Department of Justice (DOJ) published a rule that will result in an increase of anywhere from 35% to 96% in possible penalties for immigration related violations. For example, the minimum penalty for employing individuals not authorized to work in the U.S. will increase from \$375 to \$539, while the maximum penalty will go up from \$3,200 to \$4,313. Employers with multiple violations, which originally resulted in a penalty from \$4,300 to \$16,000, will now be faced with a penalty of \$6,469 to \$21,563. Similarly, the possible fines for Form I-9 paperwork violations nearly doubled. Fines now will be in the range of \$216-\$2,156 per violation rather than \$110-\$1,100 per instance.

Given the hike in penalties, experts believe that this signals a shift in policy for ICE to refocus on worksite inspections and that the increase in possible fines will incentivize ICE to conduct employer investigations and identify misconduct. This is particularly true for employers that are in industries usually targeted by ICE such as agriculture, construction, hospitality, textile, and large manufacturers. The rule took effect on August 1, 2016, and the increase in fines will apply to violations that took place after November 2, 2015.

Currently, employers face significant uncertainty when it comes to immigration compliance. Of course, we always encourage employers to review their immigration compliance policies and procedures on an on-going basis. But the biggest takeaway for employers is that the key to defending any employment-related investigation is the employer's ability to demonstrate it is proactive and has consistently acted in good faith. To the extent an employer has questions, the employer should seek the assistance of an immigration attorney. Continue to check back with us for updates on the status of this important immigration issue.

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