TECHNICAL BULLETIN

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IMMIGRATION REFORM AND CONTROL ACT OF 1986

by Richard L. Stokes

Immigration control has become an ever increasing concern in this country. Until recently, immigration problems were thought to exist only in the large cities of the east and west. This trend, however, has drastically changed. This has prompted the federal government to implement new controls governing the employment of illegal immigrants.

On November 6, 1986, the President signed into law immigration reform legislation. The new law (P.L. 99-603, "Immigration Reform and Control Act of 1986") makes it unlawful for any person knowingly to hire, recruit or refer for a fee any alien not authorized to work. It also requires that employees comply with the employment verification system as outlined by the law.

Employers must verify all new hires by examining documents that prove work authorization and indicate the person's identity such as a United States passport, birth certificate, Social Security card, drivers license or an alien identification document. The employer must also have employees attest in writing that they are authorized to work in this country.

To assist employers in verifying status of aliens applying for jobs, a new position of Assistant Commissioner, Employer/Labor Relations has been set up in the U.S. Immigration and Naturalization Service. Additional personnel will be employed as the need arises.

Exempt from the provisions of the law are 1) employers of three (3) or fewer workers, 2) claims which are enforceable under Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e, and 3) employment actions based on citizenship status where the employer must discriminate based on citizenship in order to comply with requirements imposed by statutes, regulations, executive orders, government contracts, or where the Attorney General determines citizenship status is essential for an employer to do business with a federal, state, or local government agency or department.

The Justice Department will soon have available forms on which the employers must swear, under penalty of perjury, that they made proper verification. As previously mentioned, the employee must also attest in writing before being hired that he/she is authorized to work in the United States and the completed forms must be retained and made available for inspection by the Immigration and Naturalization Service or the Department of Labor for up to three years. Failure to comply could possibly result in a fine of up to $1,000. Employers are relieved ,however, from verifying an individual when the person is referred by a state employment agency and has documentation to prove it.

The first six (6) months after the date of enactment (December 1, 1986) are considered an education period and no enforcement actions will be taken. During the subsequent twelve (12) month period, only a warning citation will be issued for first offenses. The law, however, establishes penalties against employers of $250 - $2,000 per alien for a first offense; $2,000 - $5,000 per alien for a second offense; and $3,000 - $10,000 per alien for a third offense effective June 6th, 1987. Criminal penalties of up to six (6) months in prison and a $3,000 fine can be imposed where a "pattern or practice" of violations occurs.

The law prohibits discrimination based on national origin (foreign appearance) or citizenship status, and establishes the Office of Special Counsel for Immigration-Related Unfair Employment Practices within the Department of Justice for the purpose of investigating and prosecuting any charges of discrimination. Employers would, however, be allowed to hire U.S. citizens over an equally qualified alien.

This may all change after three years when the General Accounting Office must determine if the law has caused employment discrimination based on national origin or is unduly burdensome. If the sanctions are terminated, the anti-discrimination provisions would also be repealed.

Listed below are several general recommendations for employers to consider pending the distribution of additional information from the Justice Department scheduled to be issued during the next six (6) months:

1. Be alert for compliance information from the government during the six (6) month education period.

2. In the official written personnel policies, state intention to hire only legal workers.

3. Inform all newly hired employees that when guidelines are received they must provide proof of work eligibility.

4. Do not discharge present employees or refuse to hire new employees based on foreign appearance or language.

5. Assist applicants for legal status under the legalization or agricultural worker programs who request summaries of employment history to help prove their residence.

MTAS will continue to monitor this situation. As additional information is made available, we will forward it on. If you have any immediate questions do not hesitate to contact Rick Stokes at MTAS-Nashville, (615) 256-8141.

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