Labor and Employment Alert: California Law Regulates Employers' Responses to Federal Immigration Inspections

Related Professionals

Robert A. Harris

Michael C. Griffaton

Related Services

Labor and Employment

CLIENT ALERT | 2.1.2018

With immigration being a hot topic, California employers should be aware of legislation enacted in October 2017 that restricts their ability to cooperate with federal immigration officials. Effective January 1, 2018, California Assembly Bill 450 regulates public and private employer responses to immigration worksite enforcement actions "except as otherwise required by federal law."

First, an employer is prohibited from reverifying the employment eligibility of a current employee at a time or in a manner not required by specified federal law. An employer who violates this provision is subject to a penalty of up to $10,000. California law now also prohibits an employer from providing voluntary consent to an immigration enforcement agent to enter nonpublic areas of a workplace unless the agent provides a judicial warrant. An employer who violates this provision is subject to a civil penalty of $2,000 to $10,000 per violation. These, and the other penalties specified below, may only be recovered by the California Labor Commissioner. However, an employer may take the agent to a nonpublic area, where employees are not present, in order to verify whether the agent has a judicial warrant so long as no consent to search nonpublic areas is given in the process.

An employer is further prohibited from providing voluntary consent to an immigration enforcement agent to access, review or obtain the employer's employee records without a subpoena or court order. This does not apply to I-9 Employment Eligibility Verification forms and other documents for which a federal Notice of Inspection has been provided to the employer. An employer who violates this provision is subject to a civil penalty of $2,000 to $10,000 per violation.

Additionally, an employer must provide notice to current employees, by posting in the language the employer normally uses to communicate employment information, of an inspection of I-9 Employment Eligibility Verification forms or other employment records conducted by an immigration agency within 72 hours of receiving the federal Notice of Inspection. The notice's contents are detailed in the law. Upon reasonable request, an employer must provide an "affected" employee

a copy of the Notice of Inspection. An “affected” employee is one who is identified as possibly lacking work authorization or whose documentation is deficient.

An employer also must provide an affected current employee, and the employee’s authorized representative (i.e., union) with a copy of the written immigration agency notice that provides for the inspection results and written notice of the obligations of the employer and the affected employee arising from the action. The contents of this notice are also prescribed by the statute. An employer who fails to provide this notice is subject to a civil penalty of $2,000 to $10,000 per violation.

Finally, an employer is prohibited from reverifying the employment eligibility of a current employee at a time or in a manner not required by specified federal law. An employer who violations this provision is subject to a penalty of up to $10,000.

California employers now have to comply with both federal immigration law and new state requirements that could result in substantial penalties for noncompliance. Employers should review their policies and practices to ensure that they conform to their new obligations for handling federal immigration workplace inspections. Contact your Vorys lawyer if you have questions about complying with California or federal immigration requirements.