CLIENT ALERTS & INSIGHTS

California Employers Subject to State-Specific Obligations Under New Immigration Law

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Effective January 1, 2018, California's Immigrant Worker Protection Act, AB 450, imposes new obligations on California employers. In light of the Trump administration's increased immigration enforcement efforts, the California legislature enacted this law to protect employees from enforcement in the workplace.

Accordingly, California's public and private employers must comply with numerous state-imposed legislative requirements:

- Employers are prohibited from voluntarily consenting to an immigration enforcement agent's request to enter non-public areas of the workplace; however, employers must comply with a judicial warrant.
- Employers are prohibited from voluntarily consenting to an immigration enforcement agent's access, review, or procurement of employee records; however, employers must comply with a subpoena or court order.
- Employers are prohibited from re-verifying employment eligibility of a current employee, unless required by federal law.
- Employers must post notice of an immigration worksite enforcement action within 72 hours of receiving a notice of inspection of employment records. The notice must include -
    - The name of the immigration agency conducting the inspection;
    - The date the employer received notice of the inspection;
    - The nature of the inspection, to the extent known; and
    - A copy of the notice of inspection.

      California's Labor Commissioner is charged with developing a template notice for employer use by July 1, 2018.

- Employers must provide a copy of the written immigration agency notice with the inspection results within 72 hours of receipt to affected employees and any affected employees' authorized representatives. Within 72 hours, employers must also hand-deliver individualized notices to affected employees and any affected employees' authorized representatives that detail the resulting obligations of the employer and employee. The notices must include -

- A description of any and all deficiencies or other inspection results related to the affected employee;
- The time period for correcting any deficiencies identified by the immigration agency;
- The time and date of any meeting with the employer to correct the deficiencies; and
- Notice that the employee has the right to representation during any scheduled meeting with the employer.

While California's new legislation does not present a direct conflict with federal law, its requirements are bound to raise difficult questions for employers aiming to fully comply with both federal and state law. Employers must grapple with questions like which agents qualify as immigration enforcement agents and whether the new law implicitly bars employers from conducting internal I-9 audits. The answers to these questions remain somewhat unclear. Thus, compliance may prove to be problematic and penalties for non-compliance are steep. An employer that unlawfully re-verifies a current employee's employment eligibility may face a civil penalty of up to $10,000. Likewise, failure to comply with any of the other statutory provisions may result in civil penalties of up to $5,000 for a first offense and $10,000 for subsequent offenses.

Moving forward, employer representatives responsible for interfacing with immigration enforcement agencies should be made aware of these recent legislative developments. However, until the mandates of the law are more clearly delineated, employers should proceed with caution.

If you have any questions on this topic, please contact a member of our Labor & Employment Practice Group.

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