

CLIENT ALERT

February 9, 2007

IMMIGRATION AND CUSTOMS ENFORCEMENT MEASURES REQUIRE SWIFT ACTION BY EMPLOYERS

In December 2006, federal officials raided Swift & Co. meatpacking facilities in six states, which resulted in the arrests of more than 1,280 workers on alleged identity theft and immigration violations. While this was the most publicized of such employer raids, it is by no means the sole example. Immigration and Customs Enforcement (ICE) measures against employers increased three-fold in 2006 compared to 2005, while the number of criminal charges stemming from such federal workplace raids quadrupled to over 700.

This newfound enforcement policy by ICE has not been limited to meatpacking plants or the largest factories in the Midwest and South. Raids have occurred in small companies and local restaurants charged with employing as few as ten illegal immigrants, including some right here in Connecticut. An Enfield-based nursery and its parent company have been hit with human trafficking federal lawsuits brought by their own workers.

As employers, we recommend that you take steps immediately to protect your business and your employees:

- Be familiar with the status of your **Form I-9 Employment Authorization Verification** records. Ensure that your personnel department has been properly following I-9 instructions. Keep your Forms I-9 together and separate from other employee documents.
- Conduct a **self-audit of your Forms I-9**. ICE includes a consistent practice of I-9 self-audits as one of its ten “best practices.” Self-audits are considered part of an employer’s good faith defense in the event I-9 violations are found by ICE.



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- Pay attention and adequately address **Social Security Administration no-match letters**. These letters are intended to inform you that a discrepancy exists between a worker's name and Social Security number. They cannot be ignored. SSA no-match letters have been the basis of criminal investigations, including the Swift raid.
- In the event that ICE conducts an **I-9 audit**, be aware that this is often the first step of a criminal investigation. Contact legal counsel immediately. While you should never, under any circumstances, alter or forge a document, you do have the opportunity within the three-day warning before an audit to make corrections or completions to your Forms I-9.
- Have a **Crisis Management Plan** in place in the event of an ICE raid. Ensure that it includes the following:
 - Inform your **security guards** of the correct response to an ICE search or raid. The security guards will most likely be the first employees that federal investigators meet when coming onto an employer's premises.
 - Have a **contact list** of managers and human relations personnel that should be called immediately in the event of an ICE raid. This list should also include your legal counsel.
 - Be aware of your **legal rights** as an employer. As with any criminal investigation or search and seizure, you do have rights that should and must be protected. Any employees interviewed or arrested also have the right to counsel and the right to be interviewed or decline an interview. Ensure that your employees know their rights.
 - Prepare your **message to the media**. A calm, organized message to the outside world may prevent a raid from becoming a top headline.
 - Prepare your **message to your customers**. Be aware of consequences to your customers in the event that an ICE raid temporarily ceases operations.
 - Prepare your **message to your employees**. An ICE raid will shock all employees, even those who unquestionably are authorized to work for the employer. Do not let panic spread. Be prepared to answer questions from and offer assistance to the family members of any employees seized by ICE.
 - Check your **insurance policy**. Learn whether it covers lost production and lost profits or the legal consequences that may result from an ICE raid.

Preparation is the best defense with regard to an ICE audit or investigation. Prepare your records and your company as thoroughly as possible before ICE comes knocking.

Members of the Shipman & Goodwin Immigration Compliance and Enforcement Defense (ICED) Task Force are available to help business owners get their house in order. Formed in response to the recent crackdown by Immigration and Customs Enforcement on employers who hire undocumented workers, the ICED Task Force is a full-service team of attorneys from several disciplines, including immigration law, labor and employment law and white collar defense, which pool their resources and work together to help business in the following ways:

- Assist in planning for and obtaining the necessary U.S. work authorization for foreign workers critical to the business plan
- Advise business owners on the contractual provisions and other steps they should be using to protect themselves from subcontractor liability
- Set up an I-9 verification system that complies with “best practices”
- Review current I-9 verification systems to make certain that it meets “best practices”
- Assist with the proper response to Social Security “No-Match” letters
- Conduct an I-9 audit and resolve any deficiencies without incurring risk of committing paperwork violations under immigration laws
- Deal with the U.S. Department of Labor concerning any wage and hour violations pertaining to the employment of foreign workers
- Help create and implement a Crisis Management Plan
- Provide the necessary criminal defense if business owners and managers are threatened with prosecution under U.S. immigration and criminal laws for the hiring, transportation or harboring of undocumented workers. ▲

QUESTIONS OR ASSISTANCE?

For more information on the ICED Task Force, please contact:

Brenda Eckert
860-251-5712
beckert@goodwin.com

Ross Garber
860-251-5901
rgarber@goodwin.com