Immigration Crackdown Hits Employers

At a time when President Obama is encouraging American companies to re-start their hiring engines, the nation's employers find themselves spending precious time and money not on hiring, but on defending their hiring practices.

In particular, companies small and large face greater regulation than ever over the hiring of legally authorized workers. This new era of regulation comes at both the federal and state level, meaning corporations must be prepared to defend themselves on multiple fronts.

That is in stark contrast to much of the previous 25 years in which U.S. employers, following passage of the Immigration Reform & Control Act of 1986, faced very little enforcement. For most companies, compliance simply meant following the I-9 verification system.

The country understood that to grow our economy we needed workers, and all were benefitting from the contributions of both the documented and the undocumented. That was especially true in the Southeast, where few states had any type of immigration enforcement laws.

Then came 9/11 and the Great Recession, which spurred a national response that illegal immigrants must be the cause of all of our country's woes.

The result is a dizzying and difficult maze of regulatory requirements. At the federal level, employers must continue to comply with the I-9 program. The Department of Homeland Security, the successor to the INS, has reduced but not eliminated its use of work site raids and now focuses on employer compliance.

Within the last few months, DHS has set up a special office in Washington with 15 I-9 auditors who work exclusively on that issue. Waves of requests for I-9s and related personnel documentation began pouring into corporations last year and continue in 2011.

At the same time, Homeland Security has been conducting 25,000 annual H-1 work visa site investigations, all funded by fraud prevention fees paid for by petitioning employers. While work site raids create good media, the new focus on paper investigations is a more extensive, more intrusive and longer term approach that will give employers greater pause to consider their hiring practices.

With this greater focus on employers, it is little surprise there has been an increase in the number of employer sanctions cases and cumulative total fines. (The number of deportations also has increased, with the Feds leaving the regulation of undocumented workers to local enforcement through the 287(g) program.)

Companies also are increasingly being asked to use the controversial E-Verify system. This system was designed, in part, to assist employers confront one of their biggest issues – how to handle Social Security

mismatch letters. Today, all federal contractors must use E-Verify, despite a federal judge's ruling that the system was not accurate enough.

At the same time, new state laws are forcing employers to use E-Verify. In Georgia, if a company wants to do business with any government entity, they must opt into the E-Verify program.

Meanwhile, the program continues to be criticized and it remains unclear whether it can handle a massive increase in users and not continue to be plagued by inaccuracies, which proportionately tend to hurt lawful U.S. workers more than the undocumented.

The bottom line is that Georgia employers, who should be using their cash stockpiles to sell more products, provide more services and add to their workforce, are instead grappling with a new wave of regulation that only serves to siphon away that precious cash.