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Eligibility Check

Employers turn to software solutions to ensure I-9 compliance.

By Keith Ecker

Wal-Mart Stores Inc. is acutely aware of the need to be more careful in managing its I-9 forms— government-required documents that prove employees' eligibility to work in the U.S. In 2003 immigration officials raided several stores and found that the retailer's cleaning contractors employed hundreds of illegal immigrants. As a result, Wal-Mart entered into a consent decree that required it to pay \$11 million and establish a program to ensure better I-9 compliance.

Wal-Mart is just one of thousands of companies to get caught employing unauthorized workers during recent worksite enforcement raids. Since the creation of U.S. Immigration and Customs Enforcement (ICE) in March 2003, worksite enforcement targeting the unlawful employment of illegal aliens has skyrocketed. In 2006 the number of arrests as a result of worksite investigations totaled 4,385. That's nearly a 240 percent increase from 2005. And 2007 is shaping up to be a busy year for ICE as well, with 3,290 arrests already reported.

"I-9 audits and worksite enforcement activities are on the uptick," says Jim King, partner at Seyfarth Shaw. "We're also seeing the government taking increasingly aggressive tactics against companies, such as using the threat of criminal proceedings in situations where authorities discover a significant population of unauthorized workers."

This is why it's more crucial now than ever before for companies to maintain proper I-9 compliance. That task has become a little easier thanks to software solutions that help employers better fill out and manage their I-9 forms.

"An employer of any size needs to have an I-9 process," King says. "Even if there's an investment that an employer has to make upfront, it's well worth doing in terms of training and reducing risk."

Data Discrepancy

One area in which software can aid employers is preventing discrepancies between sections one and two of the I-9.

Because I-9s are separated into two main sections, each filled out by a different individual, errors and inconsistencies are common. Employees fill out the first part with their personal information, including name and Social Security number or alien identification number. The employer then fills out the second portion, which requires the employer to record information regarding the employee's proof of eligibility.

"Nearly all employers' I-9s have some discrepancies, typically between sections one and two," says Ken Sekella, vice president of operations for Form I-9 Compliance, an immigration compliance software provider.

"Many times an employer will accidentally spell an employee's name wrong on section two or transpose Social Security numbers." These errors can add up to huge fines. The government charges \$110 per error on each form, capping the fine per form at \$1,100. For a company such as Wal-Mart, which retains about 2 million I-9s, even an error rate of 1 percent packs a \$2.2 million punch.

But Wal-Mart no longer needs to worry about such mistakes. In 2004 the company developed proprietary software that hosts all I-9 forms online and automatically highlights inconsistencies.

"There's a button on the electronic I-9 that checks the I-9 form for errors," says Magdeline Momani, assistant general counsel, immigration for Wal-Mart. "If there are no errors, it will process the form. If there are, it will highlight them in yellow and prompt an HR manager." Vendors sell similar off-the-shelf software programs that host a company's I-9 forms in a password-protected online database and let employees and employers sign I-9s electronically.

"Our forms are what I call semi-smart," Sekella says. "It detects errors and has been programmed to flag users if the form isn't filled out completely."

Worker Reminder

Errors on an I-9 can be costly, but not nearly as much as knowingly hiring or retaining an illegal immigrant. Under the Immigration Reform and Control Act, a first offense carries a fine from \$250 to \$2,000, a second offense from \$2,000 to \$5,000 and a third offense from \$3,000 to \$10,000. And that doesn't factor in criminal penalties or the PR fallout.

This is why it is crucial that employers keep track of their workers' documentation, such as visas or a work permits. The burden is on the employer to remind workers when their paperwork will expire so the company won't be held liable in the event of an audit.

The same software that ensures employers enter I-9 information correctly also can automatically track when an employee's documentation will expire. For instance, Wal-Mart's system automatically sends e-mails to HR managers 120 days before a document expires. It then periodically sends additional e-mail reminders every 30 days, giving the employer ample time to make sure the employee updates the paperwork.

"It's a best practice because we don't want these deadlines creeping up on our employees," Momani says. "Another benefit of the technology is that it helps in our retention efforts because we can share this information with our workers to help them protect their jobs."

This same technology also can verify whether an employee's information is valid. For example, Form I-9 Compliance allows employers to compare I-9 information to data in the Social Security Administration database and federal immigration records through the Department of Homeland Security's Basic Pilot Program. If the information checks out, the system automatically kicks back a confirmation. If it doesn't match, employers can take additional steps to determine an employee's eligibility.

"With this feature, all concerns about fraudulent documents go away," Sekella says.

New Burdens

This feature may become more critical in the future. Congress is currently mulling over a bill called the Security Through Regularized Immigration and a Vibrant Economy Act (STRIVE). Introduced earlier this year, the bill calls for increased border security personnel, increased border surveillance and the incorporation of biometric data into travel documents. If passed, STRIVE also would require all employers to use the Basic Pilot Program or a similar database to verify their employees' eligibility to work.

"It's pretty clear that whatever Congress ends up doing with regard to comprehensive immigration reform, one

piece will be the mandatory use of an electronic verification system," King says.

Wal-Mart is already preparing for the passage of such a law. The company has worked with outside vendors to adapt its I-9 system to comply with the new legislation. "We are ready to make our system work seamlessly with the government's with the click of a button," Momani says.

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