Ogletree Deakins

New California Form Helps Employers Comply With Immigrant Worker Protection Act

February 19, 2018

By James N. Garilas and Bernhard Mueller

The California Labor Commissioner's Office has released a template notice form to help employers comply with the posting requirements under California Labor Code section 90.2(a)(1), also known as the Immigrant Worker Protection Act or AB 450, which requires employers in California to notify their workforces within 72 hours of any immigration law compliance inspection or audit initiated by federal agencies.

The California Labor Commissioner's Office has released a template notice form to help employers comply with the posting requirements under California Labor Code section 90.2(a)(1), also known as the Immigrant Worker Protection Act or AB 450, which requires employers in California to notify their workforces within 72 hours of any immigration law compliance inspection or audit initiated by federal agencies. The template notice form is a one-page document that allows employers to satisfy the AB 450 notice requirement by simply checking appropriate boxes on the form, filling in dates, and posting the notice (together with the inspection notices received from the federal immigration agency) in a conspicuous location. The template notices are available in English and Spanish, and they can be downloaded from the state agency's website.

AB 450

Effective January 1, 2018, employers in California are prohibited, with limited exceptions, from providing voluntary consent to immigration agents to enter nonpublic areas of the workplace without a judicial warrant. Employers are also prohibited from voluntarily consenting to allow an agent to access, review, or obtain employee records without a subpoena or court order. However, federal immigration agencies (usually the U.S. Immigration and Customs Enforcement agency) may still request an employer's I-9 verification records by serving a Notice of Inspection to the employer.

Under the new California law, employers must notify affected employees within 72 hours of receiving such a Notice of Inspection. The employer's notice must be posted in the language that the employer "normally uses to communicate employment-related information to the employee" and must include (1) the name of the immigration agency conducting the inspection; (2) the date on which the employer received the Notice of Inspection; (3) the nature of the inspection, to the extent known; and (4) a copy of the Notice of Inspection. In addition to posting the template notice provided by the California Labor Commissioner's Office, employers must also post the actual Notice of Inspection (and accompanying documents) received from the federal immigration agency.

Impact on Employers

The template notice form provides employers with a short, user-friendly document that can be utilized to ensure compliance with the new California state law. Because the penalties associated with noncompliance are significant (up to $10,000 per violation), employers may want to proactively develop and implement action plans and have internal notification procedures in place prior to any worksite inspection.

Ogletree Deakins' Immigration Practice Group will continue to monitor developments on this issue and provide updates as further information becomes available.

AUTHORS
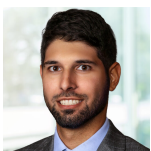
James N. Garilas
Associate, Columbia

Bernhard Mueller
Shareholder, Columbia

RELATED ARTICLES

November 17, 2022

DOL Sued Over FOIA Request for Contractors' EEO-1 Reports

January 25, 2023

OFCCP's Scheduling List Targets Contractors That Didn't Certify in OFCCP's Contractor Portal

RELATED WEBINAR

February 9, 2023

I-9 Compliance Series: The Basics, Part 1—What Does Good Faith Compliance Mean? Contractors'…

RELATED SEMINAR

February 16 | Miami, FL

Employment Law Briefing

Browse More Insights

PODCASTS

SEMINARS

WEBINARS

Sign up to receive emails about new developments and upcoming programs.

SIGN UP NOW