

February 28, 2018

CALIFORNIA'S "IMMIGRANT WORKER PROTECTION ACT" IN EFFECT; DLSE ISSUES NOTICE TEMPLATE AND GUIDANCE

California's A.B. 450, the "[Immigrant Worker Protection Act](#)," took effect on Jan. 1, 2018, imposing strict new obligations on all California employers during immigration enforcement actions and when receiving a Notice of Inspection (NOI) from U.S. Immigration and Customs Enforcement (ICE) regarding I-9 forms and other employment records. Employers should pay close attention to their new obligations under A.B. 450, particularly as ICE has signaled that it will be responding to this new law with increased raids and inspections at California workplaces. Joint guidance on A.B. 450 recently issued by the California Division of Labor Standards Enforcement (DLSE) and the California attorney general, as well as a notice template from the DLSE, should assist employers with their compliance efforts.

No Voluntary Consent to Worksite Access and Records

A.B. 450 prohibits all employers, and all persons acting on behalf of employers, from voluntarily consenting to allow an immigration enforcement agent to enter nonpublic areas of the workplace without a judicial warrant. Additionally, employers may not voluntarily consent to allow an immigration enforcement agent to access, review, or obtain employee records without a subpoena or judicial warrant. Importantly, this latter prohibition does not apply where the employer has received an NOI for I-9 Forms and other records.

The new joint guidance on A.B. 450 issued by the DLSE and the California attorney general defines a nonpublic area as one that "the general public is not normally free to enter or access," such as an office where personnel or payroll records are kept. Furthermore, the guidance states that "for consent to be voluntary, it should not be the result of duress or coercion, either express or implied," and that the law does not require physically blocking an immigration enforcement agent in order to show that voluntary consent was not provided. The guidance also provides a sample judicial warrant and subpoena, for employers' reference.

Pre-Inspection Notice; New Template

Under A.B. 450, an employer that receives an NOI has new notice obligations. First, within 72 hours of receiving the NOI (whether it is mailed to the employer or delivered by ICE agents), the employer must provide written notice to each current employee by posting the following information in the language the employer

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SF, CA 94104
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typically uses to communicate employment-related information to its employees:

- The name of the immigration agency that will be conducting the inspection;
- The date the employer received the NOI;
- The “nature of the inspection” to the extent known; and
- A copy of the NOI.

Employers must also provide the written notice within the same timeframe to any collective bargaining representative. Furthermore, the employer must provide an affected employee a copy of the NOI upon the employee’s request.

The DLSE, as directed by the new statute, has published a template that employers may use to satisfy the initial notice requirement. The template is available on the [DLSE website](#). Employers are not required to use the template – and should ensure that it otherwise fits the notice requirements of their particular situation and business before relying on it – but may find it convenient.

Post-Inspection Notice

A.B. 450 also requires employers to provide notice of the *results* of the inspection to any “affected employees” and their representatives within 72 hours after the employer receives the inspection results. An “affected employee” is an employee who may lack work authorization or an employee whose work authorization documents have been identified as deficient. Any such notice must relate solely to the affected employee, and must be hand-delivered to the employee at the workplace, if possible. If hand delivery is not possible, the employer should deliver the notice by mail and email (if the email is known). The post-inspection notice must contain:

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

No template exists for this post-inspection notice, and A.B. 450 does not require the DLSE to develop one. Employers should work with experienced Human Resources professionals or legal counsel to develop a compliant notice should the need arise.

I-9 Reverification

In addition to the worksite enforcement and notice provisions of A.B. 450, the law also prohibits an employer from reverifying a current employee’s employment eligibility at a time or in a manner that is not *required* by the work authorization



provisions of the federal Immigration Reform and Control Act (IRCA). Violation of this prohibition alone subjects the employer to a civil penalty up to \$10,000.

Takeaways

Civil penalties for violations of the [Immigrant Worker Protection Act](#) are steep, ranging from \$2,000 to \$5,000 for a first violation of the entry and notice requirements and \$5,000 to \$10,000 for subsequent violations. And with ICE's recent announcement of plans to increase worksite enforcement operations by 400%, it is critical for businesses to ensure that their HR and management teams understand the new obligations imposed by A.B. 450 so they are legally equipped to handle a visit from ICE or a Notice of Inspection. For more information, employers can refer to the new A.B. 450 [joint guidance](#) issued by the DLSE and the California attorney general's office.

Miller Law Group exclusively represents business in all aspects of California employment law, specializing in litigation, wage and hour class actions, trials, appeals, traditional labor, compliance advice and counseling. If you have questions about these developments or other workplace obligations, please contact us at (415) 464-4300.

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