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Announcement Impacting Employers Made Today by the Department of Homeland Security

In a Department of Homeland Security (DHS) briefing today attended by GT attorneys Dawn Lurie and Laura Reiff, Barry Jackson from the White House, Secretary of Commerce Gutierrez and Secretary of the Department of Homeland Security Chertoff all expressed their disappointment over the stalling of Comprehensive Immigration Reform. Secretary Chertoff reminded stakeholders that the government was "under an obligation to do the best we can to satisfy the will of the people" and "sharpen the tools we already have in place". With that said they introduced an enforcement focused agenda along with other initiatives termed "bitter sweet" news for employers. Through the introduction of these initiatives, the Administration is attempting to "fix" everything it can, within its authority, that does not require action by Congress.

- After a year of delays, the Social Security mis-match regulation has been published today. It will be effective within thirty (30 days) and closely follows the proposed regulation. However, the final regulation briefly extends the timeframes originally noted for contacting the Social Security Administration (SSA) to resolve a no-match discrepancy, as well as the time limits for employers to follow in order to benefit from the "safe harbor" provision. Many of those in attendance at the meeting expressed huge concerns regarding the impact that the rule will have on both employers and immigrant communities alike. We can expect new Social Security mis-match letters to come out in eight to ten week cycles, beginning in September. GT will be posting an Alert outlining the final rule by Monday.
- The new E-Verify, employment eligibility verification program (http://www.dhs.gov/ximgtn/programs/gc_118522_1678150.shtm) which replaces the legacy Basic Pilot was also unveiled. E-Verify is an Internet-based system operated by the Department of Homeland Security in partnership with the Social Security Administration that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Enhanced photo tools will be made available on August 31st to participating employers. Currently, approximately 15 million Employment Authorization Documents (EADs) and Permanent Resident photographs have already been uploaded into the system and are available to be reviewed right now by E-Verify registrants.
- While not discussed during the meeting, DHS's white paper notes a **25% increase** in the civil fines imposed on employers who knowingly hire illegal immigrants. DHS claims it has existing authority to update these fines based on inflation.
- Other highlights included news on upcoming Department of Labor regulations which will streamline the H-2B and H-2A programs and make them user friendly for smaller employers. Basically the H-2B program will become an employer-attestation system akin to the PERM system in an effort to reduce delays.
- Changes to the H-1B and L-1 programs will also be announced shortly to improve their usage.
- Secretary Chertoff also announced Federal Contractors will soon need to use E-Verify, noting the federal government ought to lead by example. There will be a rule - making to amend the Federal Acquisition Regulation (FAR) with ample time allowed for comments. There is a possibility that even a Contractor's current workforce will need to be run through E-Verify if contractor's employees are placed federal sites. It is anticipated that contractors and subcontractors alike will need be part of the program.

- Additional worksite enforcement news includes the Administration's announcement that it will publish a regulation that will reduce the number of documents that employers can accept to confirm the identity and work eligibility of their employees. Currently there are 29 acceptable documents to be used with Form I-9.
- The Department of Homeland Security will extend the visa term for professional workers from Canada and Mexico to attract more of these talented workers to the United States. Professional workers who wish to lend their talents to the U.S. economy should be welcomed with open arms, not given a bureaucratic runaround. Yet the roughly 65,000 workers who enter the U.S. each year on the so-called TN visa must go to the trouble of renewing their visa every year. This regulation will extend the TN visa duration to three (3) years -- the same term as other popular professional visas.
- The Administration also announced that we can expect reform in the processing of FBI background checks for immigration related benefits and that many checks will be expedited. Current mechanisms for conducting immigration background checks are backed up and many applicants experience slowing processing times, which is of course is a question of national security. In addition, 120 USCIS agents will be hired for the purposes of conducting security checks as part of a just-issued regulation raising immigration fees; the Administration hopes that this action will prevent further backlogs. Processing will be expedited by converting the largely paper documentation system into an electronic one.
- As part of its assimilation efforts, the Office of Citizenship plans to release a revised naturalization test in September 2007. The new test will emphasize fundamental concepts of American democracy, as well as the rights and responsibilities of citizenship. The Office will also provide additional training for volunteers and adult educators who lead immigrants through the naturalization process.

GT will keep you updated on these events. Please check our website for updates.

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