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LABOR AND EMPLOYMENT BULLETIN

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IMMIGRATION REFORM UPDATE

Federal Immigration Reform Initiatives

When the Senate reconvenes today, there will be several immigration bills waiting for its consideration that are of interest to employers. (The Senate Judiciary Committee will conduct a hearing Tuesday to examine the economic impact of a guest worker program.) While it is not clear what the next step will be in the immigration reform debate, it is still highly possible that the Senate will pass some type of immigration reform legislation. The major bills pending before the Senate are summarized below.

S. 2454—Securing America's Borders Act

This bill, sponsored by Sen. Bill Frist (R-TN), is arguably the most comprehensive and far reaching of all the bills pending in the Senate. Though this bill focuses primarily on border security, it also contains provisions relevant to employers. For example, S. 2454 would:

- Increase employers' document retention obligations by requiring that verification documents be kept for seven years or one year after an employee's termination (Currently, the requirement is three years or one year after termination, whichever is longer.)
- Require that employers make photocopies of identification documents used to verify employment eligibility (Currently, there is no requirement).
- Create a rebuttable presumption that an employer knew or had reason to know it had hired an undocumented worker if, within the previous calendar year, it had hired more than ten undocumented workers.



- Direct the Secretary of Homeland Security, in cooperation with the Commissioner of Social Security, to implement an electronic employment verification system. Depending on the size of the employer, and certain other exceptions, all employers would eventually be required to participate in this system.

S. 1033—Secure America and Orderly Immigration Act

This bi-partisan bill, co-sponsored by Sen. John McCain (R-AZ) and Sen. Ted Kennedy (D-MA), includes measures such as a guest worker program and pathways to citizenship for undocumented workers. S. 1033 would, among other things:

- Establish (1) an H-5A essential worker visa program for low-skilled workers; (2) a mechanism for adjustment of immigration status (i.e., legalization program); and (3) an Essential Worker Visa Program Task Force.
- Address document security by requiring the Commissioner of Social Security to create a new Employment Eligibility Confirmation System.

S. 2611—Sen. Specter’s Proposal

The Senate Judiciary Committee has focused a lot of its recent attention on a bill drafted by Sen. Arlen Specter (R-PA). Along with several border security measures, Sen. Specter’s bill would also create a guest worker program and various pathways to citizenship.

Furthermore, under Sen. Specter’s proposal, undocumented workers already in the United States could apply for a six-year temporary visa. They would be, however, expected to return to their countries once their visas expire and would eventually be able to apply for a green card provided they paid a \$2,000 fine, passed rigorous background and security checks, and showed a basic comprehension of the English language and American civics.

S. 2612—Hagel-Martinez Compromise Measure

Co-sponsored by Senators Chuck Hagel (R-NE) and Mel Martinez (R-FL), this bill includes the following three-tiered legalization process for undocumented workers:

- (1) Those who have been in the country five years or longer would begin a route to citizenship if they learned English and paid taxes and fines.
- (2) Those in the country two to four years could apply for legal status after returning to a border crossing for document processing.



(3) Those in the country less than two years would be subject to deportation.

States Tread into Immigration Reform Waters

On April 17, Georgia governor Sonny Perdue signed into law the Georgia Security and Immigration Compliance Act. ("GSICA"). GSICA prohibits Georgia businesses from claiming, as an allowable expense for state income tax purposes, wages paid to undocumented workers earning more than \$600 annually. Furthermore, the law requires that all Georgia businesses withhold state income tax at the rate of 6 percent whenever income is reported on IRS Form 1099 and the worker in question either cannot provide a taxpayer identification number, provides an incorrect taxpayer ID number, or provides a nonresident taxpayer ID number.

GSICA also requires citizenship verification for individuals using Georgia's public services, as well as citizenship verification for state employees and employees who work for state contractors and subcontractors. This provision becomes effective July 1, 2007, for employers with 500 or more employees; July 1, 2008, for employers with 100 or more employees; and July 1, 2009, for employers with fewer than 100 employees.

GSICA goes into effect on July 1, 2007, though the provision disallowing illegal immigrant wages as a business expense does not apply to individuals hired before Jan. 1, 2008.

A copy of S.B. 529 can be obtained at http://www.legis.state.ga.us/legis/2005_06/.

Balch & Bingham's Labor and Employment Section will continue to monitor immigration reform developments in the Senate, the House, and in state legislatures in order to provide our clients with timely updates on this important issue. In the meantime, if you have any questions about immigration matters, please do not hesitate to contact:

Gerald M. Baca
Office Address:
1310 Twenty Fifth Avenue
Gulfport, Mississippi 39501-1931
Phone: (228) 214-0425
Fax: (866) 270-1277
Email: gbaca@balch.com

Christopher T. Terrell
Office Address:
1710 Sixth Avenue North
Birmingham, Alabama 35203-2015
Phone: (205) 226-8734
Fax: (205) 488-5659
Email: cterrell@balch.com



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