



DHS Publishes Final I-9 Rule

FEES AND BURGESS, P.C.,
Emphasizes:

A final rule regarding Form I-9 and published by the Department of Homeland Security became effective on August 23, 2010. This rule provides some clarification regarding the use of electronic I-9. Specifically, the final rule allows electronic completion and storage of I-9's so long as employers follow certain guidelines. Employers must maintain a record of anyone who has "created, completed, updated, modified, altered, or corrected" I-9's, although no such record must be kept for people who simply view or access the forms. In addition, DHS clarified that I-9's must be completed within three business days, and not three calendar days.

While this rule does not significantly change the basic I-9 requirements, it is a good reminder to employers to self-audit and ensure that each employee has a valid, fully-completed, signed I-9 on file. As the rule reminds employers, the federal government only needs to provide three days' notice of an audit, and given the current political landscape, audits are more likely now than ever before.

New NLRB Opinion Expands Union Rights at Secondary Employer Facilities

The National Labor Relations Act (NLRA) states that it is an unfair labor practice for a union: "(ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where . . . an object thereof is -- (B) forcing or requiring any person to . . . cease doing business with any other person" NLRA Section 8(b)(4)(ii)(B). In other words, unions in a dispute with a particular employer cannot coerce the customers of that employer and threaten those customers to stop doing business with the offending employer.

In a recent ruling by the National Labor Relations Board (NLRB), the NLRB determined that union agents holding banners outside several customer locations was not a violation of the NLRA. Specifically, the ruling discussed the actions of several union agents who held large banners on public sidewalks or other public right-of-ways outside various customer locations.

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The banners were three to four feet tall and approximately twenty feet long, and they read “SHAME ON” the various customers and mentioned a “labor dispute.” One sign stated “DO NOT EAT [CUSTOMER’S] SUSHI.” The union agents did not talk, chant, march, or otherwise verbally engage the public – they simply held banners. However, the union agents also distributed flyers to passers-by describing the underlying labor dispute with their employer.

In a 3-2 decision, because of the lack of verbal communication and because the union agents were otherwise non-confrontational, the NLRB determined that these actions did not amount to ‘coercion’ under the NLRA. The majority noted that the banners were more persuasive, which is permissible, than coercive, which is impermissible. The minority noted that the decision “unquestionably augments union power.”

The decision is Carpenters Local 1506 (Eliason & Knuth of Arizona, Inc.), 355 NLRB 159.

FEES & BURGESS, P.C. - Calendar of Events

FEES & BURGESS, P.C., is proud to present and participate in the presentation of the following upcoming seminar.

September 22, 2010–Huntsville, AL, Von Braun Center North Hall Upper Level

4th Annual 2010 Rocket City Contracting Conference

Jeff Roth has been invited to present a discussion on Service Contract Act Applicability. He will address issues such as:

- general requirements
- wage and fringe benefit payment requirements
- predecessor contractor issues
- problems and penalties
- record keeping and notice requirements
- federal law thresholds
- wage payment and overtime
- labor and union issues

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