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3 Things To Know About Immigration Fine And Fee Increases

By **Allissa Wickham**

Law360, New York (July 22, 2016, 5:37 PM ET) -- Three separate government agencies recently have unveiled an avalanche of fee and penalty increases related to immigration, ensuring that attorneys across the country had some light reading to bring with them as they headed off to the beach this summer.

First, the U.S. Department of Homeland Security **unveiled potential fee changes** in early May for a slew of immigration-related forms, including an increase for a petition for a foreign worker. Then, in late June and early July, the U.S. Department of Justice and DHS **rolled out rules** increasing penalties for so-called paperwork violations on I-9 Forms, as well as for knowingly hiring unauthorized immigrants.

And not to be left behind, the U.S. Department of Labor issued its own rule in July increasing various penalties, including penalties related to the H-2A and H-1B visa programs. With so many new fine and fee increases swirling around, here are a few key takeaways that immigration attorneys should keep in mind.

The Time For Internal I-9 Audits Is Now

The Form I-9 is something of a workplace staple, as it's used to confirm an employee's identity and work authorization. Companies with multiple I-9 form violations can face sky-high penalties, as in the case of a production company against which the government sought \$812,665 in fines.

And the consequences for messing up I-9 forms are about to get even steeper. Under the new DHS penalty rule, which goes into effect on Aug. 1, civil fines for I-9 paperwork offenses will jump from between \$110 to \$1,100, up to between \$216 to \$2,156.

"[F]or an employer, if you have hundreds of employees and sloppy I-9 practices, that doubling of the potential minimum penalty, that's a significant increase," Jeffrey S. Bell of Polsinelli PC said.

While these new fines might seem intimidating, employers can take steps to minimize their liability. For instance, companies should perform their own internal audits, according to Bruce Buchanan, an attorney with Sebelist Buchanan Law PLLC.

"When you're looking at more than doubling the potential fine, I think, [for] employers, that they ought to do an internal I-9 audit," Buchanan said.

Doing an internal audit could actually help decrease a fine from U.S. Immigration and Customs Enforcement, according to Mitchell Wexler of Fragomen, Del Rey, Bernsen & Loewy LLP.

"[Y]ou get into a conversation with the ICE investigator, and that's definitely a favorable factor," he said.

Individual Applicants Could Really Feel The Pinch

When it comes to the proposed rule on fee increases — which is separate from the rules on

penalty increases — employers will likely see price hikes. For instance, the fee for a petition for a “nonimmigrant” or temporary worker could potentially jump from \$325 to \$460.

However, some of the steepest proposed increases were reserved for individuals, rather than companies. Take, for example, the fee for seeking a waiver of “grounds of inadmissibility,” which is now \$200, but is slated to rise to \$715.

And what’s more, the fee for a travel document application is on track to increase from \$360 to \$575.

“That’s just something that has to be renewed oftentimes on a yearly basis. So that’s going to impact a lot of people,” explained Susan Cohen, the chair of the immigration practice at Mintz Levin Cohn Ferris Glovsky & Popeo PC.

She added that although employers might pay that fee in some instances, individuals will have to pay it in other circumstances, depending on “what their company’s policy is.”

Steep Increases Are Coming For The EB-5 World

Big fee increases are also in store for the EB-5 visa program, which provides green cards to foreign residents who invest significant money in a U.S. business and create jobs for American workers. The proposed rule suggests a fee hike of 145 percent for the Form I-526 — which is one of the first documents filed in the lengthy EB-5 process — raising it from \$1,500 to \$3,675.

Additionally, the DHS is seeking to create a \$3,035 fee for the annual regional center certification form, known as the Form I-924A, and the fee for a regional center designation request is slated to go from \$6,230 to \$17,795. Regional centers are a major part of the EB-5 visa program and are used to pool the investor funds.

However, although fees are going up for those involved in EB-5, Bell is skeptical that the new hikes would result in less investment.

“[I] think the reality is these individuals are investing \$500,000 or a million dollars,” he said. “I don’t think a fee increase of a couple thousand dollars would mean that these individuals would choose not to invest in the United States.”

--Editing by Rebecca Flanagan and Emily Kokoll.

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