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## ***ICE Settlement with Abercrombie & Fitch Provides Guidance for Employers Using IMAGE and E-Verify System***

In 2010, U.S. Immigration and Customs Enforcement (“ICE”) announced it had reached a \$1,047,110 settlement agreement with Abercrombie & Fitch for numerous deficiencies in the company’s electronic Form I-9 system.

The settlement demonstrates the need for employers’ electronic I-9 software to retain the same name, content, or sequence of the data elements as the paper I-9. It is imperative for employers to ensure their electronic Form I-9 system has all the basic elements of the paper version (such as all I-9 fields, employee attestations, and an electronic signature). The federal government offers the ICE Mutual Agreement between Government and Employers (IMAGE) to employers who want to ensure compliance with regulatory guidelines.

IMAGE is a voluntary partnership initiative between the federal government and private sector employers that was created in 2006. The program seeks to build cooperative relationships that strengthen hiring practices and encourage employer compliance with immigration policies.

Recently, ICE streamlined the IMAGE certification process. Under the new process, employers will: (1) Enroll in the E-verify program within 60 days; (2) Establish a written hearing and employment eligibility verification policy that includes internal Form I-9 audits at least once per year; and (3) Submit to a Form I-9 inspection.

In exchange for an employer’s compliance with the certification process’s requirements, ICE will agree to: “(1) Waive potential fines if substantive violations are discovered on less than 50 percent of the required Forms I-9; (2) In instances where more than 50 percent of the Forms I-9 contain substantive violations, mitigate fines or issue at the statutory minimum of \$110 per violation; (3) Not conduct another Form I-9 inspection of the company for a two-year period; and (4) Provide information and training before, during, and after inspection.” Additional benefits of IMAGE include ICE-provided training and guidance on proper hiring procedures and fraudulent document awareness, public recognition of the employer’s IMAGE certification, and brand name protection.

IMAGE has outlined the following as the best employment practices:

1. Use E-Verify, the DHS employment eligibility verification program, to verify the employment eligibility of all new hires;
2. Use the Social Security Number Verification Service (SSNVS) for wage reporting purposes;
3. Make a good faith effort to correct and verify the names and Social Security numbers of the current workforce and work with employees to resolve any discrepancies;
4. Establish a written hiring and employment eligibility verification policy;
5. Establish an internal compliance and training program related to the hiring and employment verification process, including completion of Form I-9, how to detect fraudulent use of documents in the verification process, and how to use E-Verify and SSNVS;

6. Require the Form I-9 and E-Verify process to be conducted only by individuals who have received appropriate training and include a secondary review as part of each employee's verification to minimize the potential for a single individual to subvert the process;
7. Arrange for annual Form I-9 audits by an external auditing firm or a trained employee not otherwise involved in the Form I-9 process;
8. Establish a procedure to report to ICE credible information of suspected criminal misconduct in the employment eligibility verification process;
9. Ensure that contractors and/or subcontractors establish procedures to comply with employment eligibility verification requirements;
10. Encourage contractors and/or subcontractors to incorporate IMAGE Best Practices and when practicable incorporate the use of E-Verify in subcontractor agreements;
11. Establish a protocol for responding to letters or other information received from government agencies indicating that there is a discrepancy between the agency's information and the information provided by the employer or employee (for example, "no match" letters received from the Social Security Administration) and provide employees with an opportunity to make a good faith effort to resolve the discrepancy when it is not due to employer error;
12. Establish a tip line mechanism (inbox, email, etc.) for employees to report activity relating to the employment of unauthorized workers, and a protocol for responding to credible employee tips;
13. Establish and maintain appropriate policies, practices and safeguards to ensure that authorized workers are not treated differently with respect to hiring, firing, or recruitment or referral for a fee or during the Form I-9, E-Verify or SSNVS processes because of citizenship status or national origin, and
14. Maintain copies of any documents accepted as proof of identity and/or employment authorization for all new hires."

In light of the heavy penalties against Abercrombie & Fitch, employers should take the opportunity to review the compliance of their employment verification process with ICE's regulatory guidelines. For information or assistance with other employment or immigration issues, please contact Ashley French at [afrench@huddlestonbolen.com](mailto:afrench@huddlestonbolen.com), (304) 730-7542 or Kevin Nelson at [knelson@huddlestonbolen.com](mailto:knelson@huddlestonbolen.com), (304) 720-7545.

<sup>1</sup>U.S. Immigration and Customs Enforcement. The Image Certification Process: Fostering Compliance Through Education and Partnership. [www.ice.gov/image](http://www.ice.gov/image)

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