

## ALERTS

### Labor And Employment Law Alert - Signing Section 2 Of I-9 Forms Can Get You In Trouble!

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On Jan. 20, 2015, the U.S. Department of Justice Executive Office for Immigration Review, Office of Chief Administrative Hearing Officer (OCAHO) in *U.S. v. Employer Solutions Staffing Group II, LLC*, upheld ICE's finding and proposed assessment of \$227,251.75 in fines for making a false attestation on Section 2 of the I-9 form.

Employer Solutions Staffing Group II, LLC (ESSG), a staffing agency, supplied temporary employees to Larsen Manufacturing Co. (Larsen). In 2011 Larsen received a Notice of Inspection (NOE) of its I-9 forms from ICE. Larsen's workforce consisted of ESSG employees and ICE was referred to ESSG, the actual employer. The audit of ESSG's I-9 forms did not find any unauthorized workers. However, the audit found technical violations related to the completion of Section 2 of the I-9 forms and ICE proposed fines of \$935 per violation plus costs totaling \$227,251.75.

What went wrong? For practical reasons, Larsen functioned as ESSG's agent in completing the I-9 forms, or so the parties believed. Larsen handled the I-9 verification process for the employees ESSG assigned to Larsen. Larsen had the employees complete section 1 of the I-9 and reviewed original documents presented by the employees. The I-9 forms and copies of the original I-9 verification documents viewed by Larsen were then forwarded to ESSG, the actual employer. The responsible ESSG employee would then complete and sign Section 2 of the I-9 forms.

The parties believed that an agency had been created and so argued when they sought review of ICE's findings from the U.S. Department of Justice. ICE argued that ESSG was in violation of the INA because the individual who completed and signed Section 2 of the I-9 did not review the original verification documents presented by the employee. The DOJ upheld ICE's proposed fines and finding that ESSG's signature in Section 2 of the I-9 amounted to a false attestation.

Although an agent may be used for I-9 verification, the attestation requirements of Section 2 of the I-9 form clearly require that the individual who is authorized by the employer to complete Section 2 and who signs the form must view the employee's original documents.

The full decision may be found [here](#).

To obtain more information, please contact the Barnes & Thornburg Labor & Employment attorney with whom you work, or a leader of the firm's Labor & Employment Law Department in the following offices:

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