

**Notice:
Adverse
Immigration
and
Employment
Legislation
Pending in
Senate**

An e-publication from
the Immigration
Practice Group at
Damon & Morey LLP

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Employer

Immigration Alert

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The immigrants' rights community is extremely concerned with the House's passage of Rep. Sensenbrenner's HR 4437, "The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005". Set to move quickly through the Senate this week, HR 4437 will bring in some of the most broad changes in immigration law since the infamous Illegal Immigration Reform and Individual Responsibility Act of 1996.

While the proponents of the bill are portraying it as a tough response to illegal immigration, it contains numerous provisions which impact many Americans.

The bill also contains numerous provisions which directly impact every US employer. These include substantial civil penalties, and even criminal penalties, for employing an unauthorized alien. The changes go far beyond the I-9 requirements of the 1986 Immigration Reform and Control Act and will add additional costs to all US employers.

From an immigration and security background, most feel that the bill fails to provide a comprehensive and realistic plan for our immigration system to enhance border security while supporting economic growth. Nearly 500 organizations, including a wide variety of civic, religious and business groups are opposing this legislation. Below is a summary of some of the areas of significant concern.

Criminalizes undocumented immigration status

Under current law, presence in the United States without valid status is a civil violation, not a criminal act. HR 4437 would create a new federal crime of "unlawful presence" and would define immigration violations so broadly as to effectively include every violation, however minor, technical or unintentional, as a federal crime. This will lead to the tragic separation of families as undocumented members of mixed-status families (e.g., married to US citizens, many with US citizen children) would never be able to secure lawful immigration status in the United States.

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Criminalizes organizations and individuals assisting undocumented immigrants

HR 4437 greatly expands the definition of "alien smuggling" to include assisting a person to remain or attempt to remain in the United States when the "offender" knows the person is in the United States unlawfully * thereby treating social services organizations, refugee agencies, churches, legal services and others the same as smuggling organizations and imposing criminal penalties for providing such assistance. It appears that even lawyers, family members and charitable workers could face federal prison time for assisting undocumented immigrants!

Liability for unlawful contract hire

An employer will be liable for unlawful hiring if the employer uses a contract or subcontract to obtain labor after the date of enactment knowing or having reason to know that the individual is unauthorized.

Hiring ten or more unauthorized aliens

A rebuttable presumption of unlawful hiring is established if an employer hires more than ten unauthorized aliens during a calendar year.

Extension of time for mandatory record-keeping

Employers will need to keep records of compliance with employment verification requirements for seven years. Currently, employers must retain documents for three years.

Social Security no-match letters

Employers would be required to maintain records of Social Security no match letters and steps taken to resolve each issue described in a no match notice. It would also require employers to maintain records of any actions or correspondence related to clarifying doubts about an individual's identity or employment authorization.

Mandatory electronic employment verification system ("EEVS")

This mandatory system (an enhanced I-9 program) would be phased in over a five year period. All employers would be required to participate within five years of enactment. Employers would be charged a fee to participate in this system.

Criminal penalties

Criminal penalties would be established for employers who engage in a pattern or practice of knowing violations of the law (either hiring or continuing to employ unauthorized aliens). Penalties include imprisonment up to six months, fines up to \$10,000 for each unauthorized alien, or both.

Please contact us should you have any questions or require any additional information.

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