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Practices: Immigration

LIGHTNING DOESN'T STRIKE TWICE? THINK AGAIN - EMPLOYER FINED SEVERELY FOR FORM I-9 VIOLATIONS AFTER SECOND GOVERNMENT AUDIT

How much can your company risk for failing to properly prepare a Form I-9 for each of your employees? How about \$600,000? Hartman Studios, Inc. ("Hartman Studios"), a company based in Los Angeles learned this the hard way. The company was fined \$605,250, reduced from \$812,665.25, for failure to comply with its Form I-9, Employment Eligibility Verification, obligations. The court deciding the case left no doubt that that the severe fine was intended to deter other employers. The most surprising fact about the case was that this was Hartman Studios' second audit. The first audit occurred in 1994 and although the company's I-9s were found deficient, the company was not fined, although it was forced to terminate some employees that were unable to provide new documentation. In 2011, Hartman Studios was audited again. The following is a summary of the charges that were brought against the company after the second audit:

1. Failure to prepare I-9s for four terminated employees;
2. Failure to prepare I-9s for eight current employees;
3. Failure to ensure that three employees check the immigration status box and enter their alien numbers in Section 1;
4. Failure to sign in the employer certification, Section 2 for 400 employees;
5. Failure to properly enter the information for documentation in Section 2 for eight employees; and
6. Failure to re-verify the employment authorization of three employees by completing Section 3.

Hartman Studios unsuccessfully argued that it didn't know about its I-9 obligations. The company asserted that it thought that forms prepared for on-call workers as part of a Collective Bargaining Agreement were sufficient to verify employment authorization. Additionally, one of its employees testified that he didn't think that signing Section 2 of the I-9 was required. The court, however, felt that since Hartman Studios had already been audited, it should have been aware that its I-9 practices were deficient and rectified them.

What is the most important lesson that employers can learn from this case? The courts and government agencies are aggressively enforcing I-9 laws. Unless a company can afford to pay a hefty fine, it should make I-9 compliance a priority and part of its culture. Even if an employer is audited and is fortunate enough to be let off the hook for I-9 violations, an employer is never fully in the clear. The government may come knocking on

its door again. Unfortunately, even with increased enforcement, most employers do not take their I-9 obligations seriously. An audit conducted by immigration counsel can potentially save a company hundreds of thousands of dollars to identifying past errors, recommending corrections and assisting with training deficiencies that can potentially minimize liability.