

The 12 days of California Labor & Employment Series – Day 5 “Immigration Worker Protection Act”

2 min read

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It's the end of the year and while everyone is busy, employers in California should be aware of new laws and regulations that go into effect on January 1, 2018. In the spirit of the season, we are using the next “12 days of the holidays” to blog about one California law a day and that law's impact on California employers. On the fifth day of Christmas, my Labor and Employment attorney gave to me – five golden rings and AB 450.

Except as otherwise required by federal law, AB 450, effective on January 1, 2018, prohibits employers from voluntarily allowing federal immigration enforcement agents to enter or access non-public areas of a work place without a judicial warrant or to access, review or obtain employer records without a court order or subpoena. These restrictions do not apply to review of I-9 Employment Eligibility Verification forms and other documents for which a Notice of Inspection has been provided to the employer. If an employer receives a Notice of Inspection, it must post a notice to current employees within 72 hours of receiving it. The notice must be in the language the employer normally uses to communicate employment related information to employees. It must contain information regarding the name of the immigration agency, the date the employer received the Notice of Inspection, the nature of the inspection to the extent known and a copy of the Notice of Inspection of I-9 Employment Eligibility Verification. Finally, employers are prohibited from re-verifying employment eligibility of current employees at a time or in a manner not required by specific federal law.

An employer may face a civil penalty between \$2,000 and \$5,000 for an initial violation and between \$5,000 to \$10,000 per violation for subsequent violations. The Labor Commissioner or Attorney General has exclusive authority to enforce these provisions.

What should an employer do to comply with AB 450? It is recommended that the employer evaluate their current procedures on re-verifying employment eligibility and train staff accordingly. The Labor Commissioner is supposed to create a template for the required notice on or before July 1, 2018. However, employers should be aware of the mandatory requirements for the notice if they need to post one prior to the template being released.

Most importantly, an employer should not allow federal immigration enforcement agent to enter the premises without court order or subpoena.

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