

## Do you need IMAGE? Promoting employer compliance with immigration laws

By Manuel H. Cairo and Brian J. Mills

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We recently met with agents from U.S. Immigration and Customs Enforcement (ICE) to discuss the ICE Mutual Agreement between Government and Employers (IMAGE) program. The idea of IMAGE was born in response to an April 1999 Government Accountability Office report that noted a high percentage of unauthorized workers employed in certain industries. By July 2006, the Department of Homeland Security (DHS) introduced IMAGE as a joint government and private sector initiative to assist employers in complying with immigration laws through outreach, education and partnership. IMAGE has always been, and continues to remain, a voluntary program.

Despite its lofty goals and intentions, however, IMAGE failed to convince employers to join the program. Employers could not discern the benefits of joining the program other than achieving some measure of confidence knowing that I-9 (employment eligibility verification) forms were in order and the workforce was authorized and obtaining the designation "IMAGE Certified," which conveyed that the participant adhered to best hiring practices.

To get those benefits, however, the employer had to adopt those best hiring practices and implement them in practice. That entailed submitting to an I-9 inspection, registering with E-Verify (instant verification of work authorization), conducting annual I-9 audits, creating policies and procedures for dealing with social security no-match letters and tips concerning unauthorized workers, self-reporting violations and using the Social Security

Number Verification System (SSNVS). In addition, employers that worked with contractors also had to make sure that the contractors and subcontractors established procedures to comply with verification requirements and had to encourage them to join IMAGE and E-Verify.

Notwithstanding these affirmative requirements, the employer received no immunity from prosecution or fines. Indeed, the Office of Special Counsel could still investigate discriminatory practices if the employer incorrectly used the SSNVS. And, if ICE found errors and violations of immigration laws during its initial inspection or later, it reserved the right to fine the employer (this was clearly stated in the actual agreement). ICE could, however, use IMAGE certification to mitigate employer exposure. But employers failed to see the bargain in this agreement.

In an effort to make IMAGE more attractive to employers, DHS announced some changes to the program. It recently streamlined the certification process in which employers will: enroll in the E-Verify program within 60 days; establish a written hiring and employment eligibility verification policy that includes internal Form I-9 audits at least once per year; and submit to a Form I-9 inspection. In return, ICE will: waive potential fines if substantive violations are discovered on fewer than 50 percent of the required Forms I-9; mitigate fines or issue at the statutory minimum of \$110 per violation in instances where more than 50 percent of the Forms I-9 contain substantive violations; not conduct

another Form I-9 inspection of the company for a two-year period; and provide information and training before, during, and after inspection.

While DHS has reduced the perceived consequences of trying to do the right thing, the burdens of joining IMAGE remain. Employers are still required to adopt the best hiring practices and are still held fully responsible for any violations. More importantly, employers are left to discern how to handle immigration issues while not violating discrimination laws under both immigration laws and traditional employment laws. Some employers may not have the financial resources or manpower to create and enforce the required policies.

In addition, employers may not want to deal with intense scrutiny of its immigration practices or police the immigration practices of contractors and subcontractors without overstepping appropriate boundaries. For some employers,

the goodwill and stable workforce may warrant participating in IMAGE.

ICE is hosting a series of seminars to discuss IMAGE and its benefits. Those seminars will discuss several informative topics from their perspective that may be worthwhile to consider. Those topics include the new IMAGE program, how to establish an immigration compliance program, proper hiring procedures, detecting fraudulent documents, use of E-Verify and anti-discrimination procedures. For more information about these seminars, please visit [www.ice.gov/image](http://www.ice.gov/image).



**Manuel H. Cairo**  
mcairo@swlaw.com  
602.382.6534

Manuel Cairo is an associate in the Phoenix office of Snell & Wilmer where he concentrates in labor and employment, and immigration law matters. He regularly advises employers in developing comprehensive best practices designed to avoid employer liability.



**Brian J. Mills**  
mbmills@swlaw.com  
714.427.7484

Brian Mills is a partner in the Orange County office of Snell & Wilmer. His practice is concentrated in employment litigation and counseling. He provides employers with ongoing advice on a wide range of personnel matters.

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