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How to deal with inadvertent/innocent violations of law

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Submitted by Rajiv S. Khanna on Sep 21st 2010

Here is a question from one of our corporate clients:

Let's say hypothetically an employer hires someone for 20 hours a week for clerical office work who is in the U.S. on a student visa.

That employee does not have a Temporary work visa and told the employer at time of hire that they (told by whom I do not know) could work as long as it was 20 hours or less each week. Employer did not verify this and hired the person for 20 hours a week and this person has worked for 2 wks now based on this information. To complicate matters let's say the college finds out that this student is working part time as well and is threatening to turn her in.

Question:

I believe a temp student visa should be in place first but if work began for 2 wks without the employee and employer obtaining a temp work visa then what could be the consequences and what should that employer do at this point? Is the employer liable?

Answer:

The employer must always prepare an I-9 for all employees. If they do not, they can be held liable.

The good news is that if USCIS/ICE believe that an error was genuine and bona fide, they are likely not to be more tolerant of the omission, especially where the employment was of short duration and the employer, upon finding out the facts terminated the employment. In my experience, this is true for all inadvertent violations of the rules. Stop the violation as soon as you find out that it is a violation, contact your lawyers about what to do and put procedures in place so that there is no repetition.

Profession/Occupation:

Employers and HR ^[2]

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