

## EMPLOYMENT SERVICES ALERT

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### DOJ Announces Record \$34 Million Settlement in Immigration and Employment Eligibility Verifications Case

On October 30, 2013, the Indian company Infosys (INFY), a publicly traded company, reached a record \$34 million settlement with the Department of Justice (DOJ), to settle "allegations of systemic visa fraud and abuse of immigration processes."

The technology, consulting and outsourcing company had been under investigation since 2011, when it received a federal subpoena to produce records regarding its B-1 visa practices. This investigation was likely the result of a civil whistleblower case by one of its employees who complained about the company's immigration procedures. The investigation of the company's visa practices also led to an audit of its Form I-9 procedures and records. A portion of the settlement amount was certainly a result of Form I-9 violations.

In this regard, DOJ alleged that, "Infosys failed to maintain Form I-9 records for many of its foreign nationals in the United States in 2010 and 2011 as required by law, including a widespread failure to update and re-verify the employment authorization status of a large percentage of its foreign national employees." Infosys denied visa-fraud allegations, but admitted that it had committed civil violations in its Form I-9 employment eligibility procedures.

However, it must also be noted that Infosys had taken significant steps to mitigate its Form I-9 non-compliance. According to the settlement agreement, it had phased in a new electronic Form I-9 system to replace its "hard copy" system, had implemented new Form I-9 compliance procedures, and enrolled in and began using E-Verify in 2011. Still, the audit revealed, "more than 80 percent of Infosys's I-9 forms for 2010 and 2011 contained substantive violations." According to the sliding scale used to determine the level of fines and penalties, the fine for each such Form I-9 error is at least \$935.

In addition to paying the settlement amount, Infosys agreed to submit to additional auditing for I-9 forms by an independent third-party auditor, at its own expense. Finally, the violations would be considered "prior violations," which means that any future violations will be subject to enhanced penalties.

This settlement certainly urges all employers to ensure strict compliance with employment eligibility verification laws. However, the case should serve as a lesson especially to publicly traded companies where non-compliance with federal regulations, even in their Form I-9 procedures, can result in significant costs to a company in addition to the fines related to its non-compliance. These violations could lead to shareholder litigation and companies will be forced to disclose the costs (or anticipated costs) of noncompliance in their filings with the Securities Exchange Commission, as Infosys did in its recent quarterly financial statements.

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