

SB 370 STAFF MEASURE SUMMARY

Senate Committee On Workforce

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Meeting Dates: 2/19

WHAT THE MEASURE DOES:

Requires employer to provide notice containing specified information to employees regarding upcoming inspection by federal agency of documentation used by the employer to verify identity and employment eligibility of employees. Authorizes employer to refuse to consent to agency request for entry into non-public areas unless federal agency obtains judicial search warrant. Requires Commissioner of Bureau of Labor and Industries (BOLI) to generate standardized notice template and provide assistance and training to employers.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Immigrations and Custom Enforcement (ICE), a federal agency established in 2003, implements the Immigration Reform and Control Act of 1986. That Act requires employers to verify the identity and employment eligibility of their employees using the Employment Eligibility Verification Form I-9 (Form I-9). Employers are required to maintain for inspection original I-9 forms for all current employees. In the case of former employees, retention of I-9 forms is required for a period of at least three years from the date of hire or for one year after the employee is no longer employed, whichever is later. Any person or entity required to retain I-9 forms must be provided with at least three business days notice prior to an inspection of the forms by an officer of an authorized agency of the United States. (8 CFR § 274a.2(b)(2)(ii))

According to ICE, the inspection process begins when ICE serves a Notice of Inspection asking an employer to produce I-9 forms for all employees. ICE personnel then inspect the forms and classify violations as either technical or substantive, based on the seriousness of the errors or omissions. Nationally, ICE performed approximately 9,140 administrative inspections from 2009 through 2012. If ICE personnel determine that an employer's workforce includes unauthorized workers, they must notify the employer and take the necessary legal or administrative actions, such as issuing a Notice of Suspect Document.

Senate Bill 370 requires an employer to provide employees notice containing specified information, by posting in the language the employer normally uses to communicate employment information, of an inspection of I-9 forms or other employment records used by the employer to verify the identity and employment eligibility conducted by a federal agency within 72 hours of receiving the federal notice of inspection. SB 370 requires the Commissioner of the Bureau of Labor and Industries (BOLI) to create a template for these purposes and make it available, as specified.

SB 370 also authorizes employers to refuse to consent to the entry of a federal agency into any non-public areas of a business in the absence of a judicial search warrant and allows BOLI to provide training to employers about their rights regarding federal inspections.

PRELIMINARY