

**JONES  
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Park City Group



## The Park City Practice

**WELCOME TO THE THIRD EDITION OF THE PARK CITY PRACTICE**, a quarterly newsletter featuring legal information for the Park City community. This edition of The Park City Practice focuses on employment law and immigration. It also announces the newest resident attorney of the Jones Waldo Park City Office, Greg Cropper. Future editions of The Park City Practice will feature articles on real estate, family law, estate planning, litigation and business law.

### Are your Employees Really Authorized to Work in the United States?

For an employer – especially one with a seasonal workforce – these are the words you don't want to hear. For years, employers have used the I-9s eligibility forms and been told that they simply need to review the documents but that they are not expected to be detectives. Employers however are routinely receiving calls and letters notifying them that there may be a problem with their employees social security numbers.

In February of 2007, the Tenth Circuit held that it was reasonable under the Immigration Reform and Control Act ("IRCA") for an employer to suspend an employee and request that he provide additional documentation to establish work authorization where the documentation originally presented was irregular. This, however, was a closely decided case and an expensive one to litigate.

In *Zamora v. Elite Logistics, Inc.*, No. 04-3205 (10th Cir. Feb. 26, 2007), Elite discovered that 36 of its employees had problematic social security numbers. Zamora's problem was that another individual was identified as having the same number. Elite requested additional employment eligibility verification, and when Zamora failed to produce the requested documents within ten days, he was suspended. Elite then requested even more documentation which Zamora failed to produce; however, he did produce his naturalization certificate and wage statement from the Social Security office. Zamora was suspended on May 22 but asked to

return to work on May 29, when his social security number was finally verified. When Zamora demanded a written apology and explanation, Elite refused and fired him. Zamora sued for national origin discrimination to which Elite responded it was just complying with the IRCA. While the Court ultimately decided that Elite had not violated the discrimination laws, the opinion provides guidance on how best to handle these situations.

First, carefully examine initial immigration documents for inconsistencies. For example, do the birth dates match on both documents? Second, don't overlook questionable immigration documents. If the documents look suspicious, they should be investigated immediately. Third, upon notification of questions regarding a social security number, immediately attempt to verify the numbers with the Social Security Administration. Fourth, check all employee records to determine whether some other documents do confirm eligibility to work before making any adverse decisions. Finally, treat all employees the same – i.e. if a number of employees have eligibility documents that are called into question, investigate each the same.

#### Proposed Immigration Legislation

The *Zamora* problems may all change with the pending immigration legislation. First and foremost, the Senate bill (S.1348) requires all employers to participate in the government's existing electronic

employment verification system called the Basic Pilot Program. This is a computer program into which employers input eligibility information and receive an immediate response. It should be noted that a number of organizations, including perhaps most vocally the Society for Human Resource Management, believe the Basic Pilot program is flawed and inadequate. Furthermore, it fundamentally changes the old rule that employers are not border patrol agents. Under the new bill, employers would be accountable for shortcomings of the system. Under the proposed bill, violations for penalties are may be increasing from \$500 to \$75,000 per violation. One large Utah employer confided in me that when she switched to the Basic Pilot Program, she lost 20% of her workforce.

## Are your Employees Eligible to Work on A Green Card?

On May 17, 2007, the U.S. Department of Labor issued a final rule amending its labor certification regulations. The new rule impacts the first stage of the green card process – known as PERM where the employer tests the labor market to prove that there are no U.S. workers who are qualified, willing and able to perform the job that is the basis for the green card. The final rule will be effective July 16, 2007 and imposes the following restrictions:

- ① Eliminates the practice of labor certification “substitution”. Under the old rule, employers often had a large number of labor certifications pending with the DOL for so long that by the time they were issued, the original employees for whom the certifications were sought are no longer employed. Employers thus often used the approved labor certification to file green card applications for newer substitute employees. After July 16, 2007, employers will no longer be able to substitute a different foreign national for the named employee on the DOL labor certification.
- ② Stage two of the green card process will be required to be filed within six months following the date of the labor certification approval or the certification will expire. Employers should immediately file any pending certifications.
- ③ From now on, employers will be required to pay any attorneys fees or costs associated with preparing filing and obtaining the labor certification. Employers will no longer be allowed to have the foreign nationals bear such expenses.



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## The Employment Law Group at Jones Waldo

Jones Waldo maintains a broad labor and employment law practice. We represent employers in all industries and virtually all areas of employer-employee relations, including risk avoidance, equal employment opportunity, fair labor standards (wage and hour matters), immigration and wrongful termination. Services we provide to employers in these areas include litigation, arbitration, mediation, administrative proceedings, training and general counseling.

### Planning & Policy Making and Employment Audits

We work with employers of all sizes to plan programs, prepare and review appropriate policies, manuals and handbooks and prepare for personnel actions such as discipline and discharge.

### Training – The Employment Law and Management Center

We have assisted numerous public and private employers in training their supervisors and employees regarding employment law compliance and sound legal management practices. The firm is one of the founders and a joint sponsor, along with the Utah Chapters of the Society for Human Resource Management and others, of the Employment Law and Management Center, that organizes and presents training programs on these important issues.

### Title VII/EEO/Americans with Disabilities Act (“ADA”) Laws

Jones Waldo’s attorneys defend employers against charges of discrimination, sexual and other harassment, retaliation and violation of the ADA.

### Wage, Hour & Leave Matters

We assist our clients in complying with laws regulating employees’ wages, hours and leave, including the Fair Labor Standards Act (FLSA), Davis-Bacon Act, the Family and Medical Leave Act (FMLA), worker’s compensation laws and others.

### Immigration

We have experience in obtaining L-1 visas for international executives and managerial transferees that come to work in the U.S. from related foreign companies or subsidiaries.

### Wrongful Termination Actions

The size and frequency of jury awards in favor of plaintiffs in wrongful termination, tort and defamation lawsuits by former employees has increased alarmingly. We have substantial experience in defending these claims. Jones Waldo attorneys also help managers in avoiding such claims by counseling with respect to discipline and discharge policies, reductions in force and individual terminations.

## New Resident Attorney in Park City Office



*Gregory L. Cropper* 435. 649.6920, GCROPPER@JONESWALDO.COM

Having moved to Park City in 1979 (nearly 30 years ago!), Greg has witnessed a great deal of change here—and he may even be considered a “local” in some Park City circles! Greg first joined Jones Waldo in 1987, and practiced real estate law with the firm for nearly eleven years before leaving in 1998. He spent much of the next ten years living abroad in such countries as Mexico, Honduras, Fiji, The Philippines and Palau. Greg returned to Jones Waldo in 2007 and now practices in the firm’s Park City office, focusing mainly on real estate acquisition, disposition and development transactions, and construction-related matters. When not working in his Park City office, Greg spends much of his time recreating in the surrounding mountains, or in Utah’s red rock canyon country.