

## Check Worker Eligibility Before Hiring

By Holly Culhane, Contributing Columnist



As the volume increases in the debate over the estimated 11 million undocumented immigrants now in the United States, it's critical that businesses increase efforts to carefully check employees' eligibility to work. American businesses have been placed in the crossfire of this heated political, economic and cultural debate.

The consequences to businesses that are careless, or flaunt the law by hiring undocumented workers? Hefty fines and prison sentences.

Immigration and "immigration reform" will become a big issue as the 2012 presidential election nears. Politicians of all stripes will use immigration as a wedge issue – some to corral minority group support, others to press for closure of the nation's borders.

To hear politicians in both major parties talk, there is common ground: People who are in the U.S. illegally are taking away jobs that should go to Americans – particularly during these economically dire times of high unemployment.

Hardliners in both parties oppose "reforms" that would lead to "amnesty" for people illegally in the U.S. They want undocumented immigrants booted from jobs and from this country.

But how the U.S. delivers "the boot" divides even the hardliners. And if businesses are careless, they will slip into this divide.

*The Wall Street Journal* recently reported that the Obama administration is cracking down on employers of illegal immigrants. It recently established the Employment Compliance Inspection Center within the U.S. Immigration and Customs Enforcement. ICE is a unit of the Department of Homeland Security.

The center's purpose is to increase the number of ICE audits – which some call "silent raids" – of companies to verify hiring records and compliance with immigration laws. Included in these laws is the requirement that employers have workers complete Form I-9, which documents an employee's eligibility to work in the U.S., and verifies an individual's identity.

*The Journal* reported in fiscal year 2010, which ended on Sept. 30, that ICE conducted audits of more than 2,740 companies and levied a record \$7 million in civil fines on businesses that employed illegal workers. This is a significant increase from the \$675,000 in fines handed down by the Bush administration in 2008.

The fines for simple Form I-9 violations range from \$110 to \$1,100, per violation, with the higher range applicable to employers with a higher percentage of mistakes and forms having no date of hire certification. Employers with large workforces that fail to properly manage the Form I-9 process can face fines of hundreds, or even millions, of dollars. Employers and their managers can also face criminal prosecution if they deliberately neglect their legal responsibilities in this area.

The increased scrutiny of businesses is made possible by the improved cooperation among ICE and other government enforcement agencies. Potentially what starts out as a wage and hour audit may become an ICE audit, as investigators have been cross-trained to recognize what might be violations of laws other than the ones they enforce.

Earlier this month, federal officials conducted a “sweep” of nearly 1,000 companies, ordering them to turn over employment records for inspection. According to *The Journal*, this sweep constitutes the biggest operation of this type since 2009 and indicates increased targeting of business.

The approach now being taken by the Obama administration is a marked departure from the approach of the Bush administration, which conducted high-profile workplace raids, rounding up undocumented workers, jailing them and eventually deporting them.

The difference: The Obama administration’s “silent raids” target businesses, leading to the firing of all undocumented workers on the payroll and the punishment of employers. The Bush administration’s “workplace raids” generally resulted in the rounding up of only the illegal workers found on the premises. *The Journal* reported relatively few companies and their executives were prosecuted during the Bush administration.

Federal officials in the Obama administration insist the “silent raids,” or audits are more effective and less costly. They note deportations have increased in the past two years, as well.

But critics counter that the ICE audits are disproportionately penalizing small businesses, because they are easier targets, and it is costly and time-consuming to determine the legal status of workers.

Clearly now is the time for all businesses – big and small -- to be cautious in their employment practices.

P.A.S. Associates recently issued an “alert” to its clients, recommending they conduct periodic self-audits, or hire a consultant to do so. Errors must be quickly corrected and oversights addressed. Federal law requires all employers to verify the employment eligibility and identification of anyone hired to work within the United States. In a federal audit, immigration agents review the Form I-9 and employment eligibility verification that employers must keep on file.

Businesses may think they cannot afford the time and resources to adequately check employment eligibility or conduct periodic “self-audits.” In reality, it is a prudent investment.

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