Risks Rise for Companies that Hire Illegal Workers

By Holly Culhane, Contributing Columnist

The targeting of U.S. businesses that employ illegal immigrants intensified this month with the introduction of the Legal Workforce Act by Rep. Lamar Smith of Texas and his 14 congressional co-sponsors, including Californians Brian Bilbray, Ken Calvert, Elton Gallegly, Gary Miller and Ed Royce.

In addition to other provisions, the bill mandates the use by all U.S. employers of E-Verify, a federal database maintained by the Department of Homeland Security, in partnership with the Social Security Administration.

Presently use of E-Verify to determine if a person is eligible to work in the U.S. is voluntary in California. Some exceptions exist, including the requirement that all federal contractors use E-Verify to confirm employment eligibility.

Introduction of the federal Legal Workforce Act follows recent action in several states, including Arizona, and most recently Alabama, to crackdown on undocumented immigrants. The Alabama law, which was signed this month, is considered the nation's strictest. In addition to mandating the use of E-Verify, it makes it unlawful to provide such services as transportation and housing to people who are not legally in the country.

Representatives of the agricultural industry, as well as farm workers oppose mandating use of E-Verify. Farm worker advocates contend the federal database is plagued by inaccuracies. Farmers worry it will remove critically needed workers from their fields at harvest. To address these concerns, the Legal Workforce Act proposes to delay mandated use of E-Verify by farmers for three years.

But this legislative maneuvering in Washington, D.C., and in states across the nation is powerful evidence the pool of low-cost, illegal workers may be drying up. And the risks to employers who persist in hiring undocumented immigrants are increasing.

If there were any doubts about the risks, the U.S. Supreme Court decision in *Chamber of Commerce v Whitting* last month should have erased them. The court upheld an Arizona law that allows state and local governments to revoke the licenses of businesses that knowingly hire workers who are illegally in the U.S. Penalties in the 2007 Legal Arizona Workers Act range from license suspension to shutdown.

A majority of justices concluded state licensing laws can establish requirements, including the use of E-Verify. Many believe the court's ruling will be a green light for other states and local governments to impose similar requirements.

With an estimated 11 million undocumented immigrants now in the U.S., the Obama administration also has recently cracked down on illegal hiring, establishing the Employment Compliance Inspection Center within U.S. Immigration and Customs Enforcement.

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 audits is the verification that employers have had workers complete I-9 forms, which documents an employee's identity and their eligibility to work in the U.S. The fines for simple I-9 form violations range from $110 to $1,100, per violation per employee. Employers and their managers can also face criminal prosecution.

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.

While use of E-Verify is voluntary in California (with the exceptions noted above), federal officials report several hundred Bakersfield businesses already use the system.

E-Verify, which is accessed online through the Department of Homeland Security website at www.dhs.gov, is a simple and quick process.

The system compares information employees provide on their I-9 forms with data in government records. If the information matches, the employee is considered eligible to work in the U.S. If it doesn't, E-Verify alerts the employer.

An estimated 5 percent of the queries to E-Verify are identified as "not authorized to work," according to recent news reports. If an employee believes the determination was made in error, he or she can continue to work for a period of time while the error is resolved. The Department of Homeland Security contends the system is 99.5 percent accurate.

Businesses today must be cautious in their hiring practices. They must conduct periodic self-audits, or hire a human resources consultant to assure that federally mandated 1-9 forms have been completed by all employees and are kept on file with the company.

A prudent company may also wish to include the use of E-Verify for new hires to confirm documents provided are not fraudulent and information on I-9 forms match information in government records. The time it takes will be well worth the effort in the long run.

This article written by Holly Culhane first appeared online and in The Bakersfield Californian on Friday, June 24, 2011. Holly Culhane is president of the Bakersfield-based human resources consulting firm P.A.S. Associates. She can be contacted through her website www.pasassociates.com and through the PAS Facebook page or by phone at 631-2165.