

Stricter enforcement of immigration laws may affect your company's hiring practices

A look at unauthorized workers in the construction industry

Despite the great need for workers, both skilled and unskilled, in the construction industry, current U.S. immigration laws are hindering contractors' capacity to hire foreign workers to meet this need.

With respect to employment, "unauthorized alien" means a foreign national who is not a lawful permanent resident of the United States and who is not authorized under U.S. immigration law to work in the United States. Employers hiring these "unauthorized" workers increasingly face both civil and criminal prosecution as a result of the newly formed Worksite Enforcement Unit of U.S. Immigration and Customs Enforcement. This agency has dramatically enhanced efforts to combat unlawful employment of illegal aliens in the U.S. In the 2007 fiscal year, which ended September 30, 2007, ICE made more than 4,900 criminal and administrative arrests in connection with worksite enforcement investigations, nearly four times the number of worksite-related arrests just two years ago. In addition, during the first three quarters of 2007, ICE obtained criminal fines, restitutions and civil judgments of more than \$30 million in connection with these types of cases.

Take, for instance, the following examples of this increased criminal prosecution against contractors hiring illegal aliens:

In May 2006, the owner of a stucco company was arrested for hiring illegal aliens as employees. Based on this illegal hiring, he was charged with harboring illegal aliens, transporting illegal aliens, making false statements and money *laundering*. He faced forfeiture of approximately \$1.5 million in proceeds from this alleged "illegal business activity," and up to 40 years in prison.

In November 2007, the owner and six managers of a northern Kentucky contractor were sentenced to federal prison after pleading guilty to the charge of conspiring to harbor illegal aliens for commercial advantage, admitting that from May 2001 through May 2006 they used illegal alien laborers in their construction company.

In August 2007, the owner of Mississippi-based Tarrasco Steel was arrested for hiring illegal alien workers from Honduras, Guatemala and Mexico. Authorities were led to the owner of Tarrasco Steel after 77 illegal aliens were arrested at a jobsite, 26 of which worked for Tarrasco Steel. Approximately \$460,000 was seized from both Tarrasco's accounts and the personal accounts of its owner.



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So, you may find yourself asking *how can I protect myself?* One of the best ways to safeguard against unauthorized employment is to use the I-9 Employment Eligibility Verification process. An employee fills out Part 1 of the I-9 form and the employer fills out Part 2, which requires the employer to swear, under penalty of perjury, that he examined the employee's identification and employment authorization documents and determined them to be accurate and valid, thereby making the employee eligible for hire. The employer must complete this form within three days of the employee's hire. Because the first thing ICE does when it is alerted to the possibility of an unauthorized worker is require the employer to turn over his I-9 files for audit, completing and retaining this form (for three years after the hire date or one year after termination, whichever is later) is crucial. No one expects the average contractor/employer to be an expert in assessing the validity of documents, so as long as the document appears genuine and the form is completed and retained, criminal penalties can most likely be avoided.

An example of failure to comply with the I-9 requirements is illustrated in the following story from Oldham County. The owner of several landscaping companies employed at least twelve illegal aliens in a one-year period. ICE opened an investigation that revealed numerous I-9 violations. Although the owner failed to participate in the investigation, one of his employees disclosed that the owner refused to complete I-9 forms, despite her prodding, because he thought the worst that could happen to him would be a small fine. He is now facing fines totaling approximately \$275,000, forfeiture of nearly \$150,000 from his corporate bank accounts, and up to six months imprisonment or five years probation.

The bottom line is that the federal government and its various agencies, particularly ICE, are aggressively pursuing employers who violate these laws. Ensure that you know the law with regard to hiring unauthorized workers and take all precautions, including diligently completing the I-9 process. If there is even a question as to the eligibility of the employee or his status, make sure the requisite documentation is provided and the forms filled out and retained in accordance with the law. What may have been just a small fine a few years ago could turn out to be more money than you or your company could afford or, even worse, imprisonment.

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