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STRATEGIES

Employers in immigration enforcement bulls-eye

For a full day last year, Swift & Company meatpackers were put on ice. A massive raid by Immigration and Customs Enforcement (ICE) at six worksites, including the former Monfort plant in Greeley, shut down production and resulted in more than 1,200 administrative arrests of illegal aliens.

The Swift raid showed a new emphasis on worksite immigration enforcement and criminal sanctions.

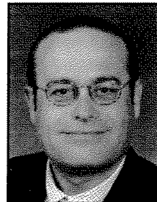
"This is a wholesale departure from the past system of sanctioning corporate violators with minor fines," Julie Myers, assistant secretary at ICE, says in a news release. "Bringing criminal charges against these unscrupulous employers and targeting their ill-gotten gains is a tactic we are adopting nationwide."

The statistics bear out this new direction. The number of criminal arrests in worksite enforcement cases increased from a mere 25 in fiscal year 2002, the last full year under the old system, to 716 during fiscal year 2006 under ICE.

The individuals who were charged included corporate officers, managers, contractors and facilitators. They were charged with criminal violations ranging from knowingly hiring or harboring illegal aliens to money laundering and conspiracy. The felony offenses carry potential prison terms of between 10 and 20 years.

Even more troubling for employers, Swift seemingly did everything right. The company participated in the Basic Pilot Employment Verification Program to confirm whether a prospective employee's name matches a legitimate Social Security number.

When Swift learned that it was under investigation, it took the initiative to interview suspect employees, and more than 400 workers were terminated or quit. The company even went to federal court to try to stop the impending ICE raid.



IMMIGRATION

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The risk isn't just from the federal government. Recently, hourly workers of carpet manufacturer Mohawk Industries Inc. in Calhoun, Ga., filed a class-action lawsuit, alleging that the employer's widespread employment of illegal workers allowed it to depress wages for its legal workers in violation of the federal RICO law.

So how can an employer protect itself?

Although employers never can eliminate the risk of becoming an enforcement target, they can substantially reduce that risk by adopting 10 "best hiring practices" recently promulgated by ICE. Significantly, ICE has indicated that should minor or isolated violations occur, it will favorably consider employers that have adopted these policies and procedures in assessing civil fines or criminal sanctions.

Here are some of the more important steps ICE recommends.

- All employers should immediately establish an internal training program and written standard procedures for ensuring Form I-9 compliance and detecting the fraudulent use of documents.

Companies should have only one or two trained employees handle all Form I-9 responsibilities to ensure consistency and knowledge of the legal framework. (Form I-9 is a federal document that employers are required to retain, showing they've checked two forms of identification.)

- All employers should participate in the Basic Pilot Employment Verification Program for all new hires and confirm the Social Security numbers of existing employees through the Social Security number verification system.

- Perhaps most importantly, all employers must have an independent firm conduct an annual I-9 audit and must adopt a policy for self-reporting any violations or discovered deficiencies.

Indeed, to receive the full benefit of voluntary compliance with the new guidelines, an employer needs to submit to an audit by federal law enforcement upon request. Obviously, any employer would be well-served to complete an internal review and correct any deficiencies before inviting law enforcement officials to perform their own audit.

- Employers also must walk a tightrope to avoid the opposite side of this problem — potential discrimination claims in the employment verification process.

For example, the Social Security Administration sends "no-match" letters if it determines that an employee's number doesn't match the name in its records. By itself, this letter doesn't mean that the employee is illegal, and employers should tread carefully while investigating the matter to avoid any appearance of discrimination.

Of course, employers already should have most of these policies and procedures in place. Federal law requires the completion and retention of Form I-9 for each new hire, and Colorado law now requires a written affirmation that the employer hasn't knowingly hired an illegal worker.

However, with the new emphasis on criminal prosecutions and worksite enforcement, there's never been a higher premium on voluntary compliance. Employers would be wise to renew their efforts in this area.

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