

No More Fence Sitting

Immigrant Hiring Just Got Tougher

By Patricia Kutza

There's a seismic shift happening with immigration laws. Legions of regional small businesses that currently hire or plan to hire immigrant workers may be in for the ride of their lives as they ramp up to comply with new and revised legislation.

"While no level-headed business owner would deliberately avoid complying, sheer ignorance of these legislative changes can spell dire consequences for their operations," says Vallejo-based immigration law attorney Clarence Mamaril.

"Hiring noncitizen workers can be a scary process," says Lilia Saddi, owner

of Jen-N-Leen Board and Care, a residential care facility located in Fairfield. "There's plenty of paper work. The process is long and tedious, and it can be upward of one year to hire a noncitizen caretaker.

"What makes it so scary," warns Saddi, "is that you have to be really careful that you do everything correctly. I advise anyone who wants to hire

Men from the village of Cheran, an indigenous community in Michoacan, Mexico, cross a fence near the border to join the seasonal labor pool.

immigrant workers to spend the money on a good attorney. He/she will help you work through what is a very complicated process and avoid costly mistakes."

A Bad PERM

The Program Electronic Management Review procedure, instituted by the U.S. Department of Labor in March 2005, is designed to streamline the labor-certification process that enables employers to permanently hire foreign-born workers.



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Employers must show that there are insufficient U.S. workers willing and qualified to do the same job and that the wages paid to these workers will not adversely affect the wages and working conditions of U.S. workers.

But a shaky rollout featuring ambiguous guidelines has employers scrambling between following the old application rules and adhering to the new ones. Employers, hoping to use the new system to speed up the processing of a pre-existing application, may risk losing their old priority date if they make any errors when re-applying.

"There are many unanswered questions under the new PERM guidelines," says Sacramento-based immigration law attorney Ann Kanter, "including how to challenge prevailing-wage determinations, how to correctly classify certain positions, what special requirements and what types of advertising will be deemed acceptable, and to what extent previously filed applications can be retrieved

and refiled under PERM."

Kanter says that the online filing process may look deceptively simple but that missteps at this stage can be disastrous: "With the current backlog of third preference, employment-based visas, a category that includes professional, skilled and unskilled (workers), a loss of an earlier priority (filing) date can translate to months and possibly years of waiting time."

Feast and Famine

The H-1B visa, reserved for jobs that require a college degree, has been a boon for employers who want to cherry-pick the best talent around the globe. However, the current annual quota of 65,000 H-1B visas is depleting fast. Employers are facing extra pressure to determine



Mexican Indians now make up a large percentage of what is considered to be the fastest-growing minority group in the United States.

an acceptable prevailing wage and correctly classify positions in time to snag the remaining visas.

The number of H-2B visas, on the other hand, has increased. This spells good news for employers of short-term workers, such as ski instructors, agricultural hands and hospitality-industry employees. Employers still must comply with all the necessary requirements to obtain these visas.

The immigration-law changes represent a slippery slope for busy employers, Kanter says. They may not allot the time to adequately forecast their hiring needs or complete the visa




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processing. She recommends that employers hire a competent immigration law firm (check the American Immigration Lawyers Association website) to help navigate these changes. They can avoid making the kind of drastic mistakes that result in denied applications or the barring of valued employees from returning to the United States.

In the Meantime ...

According to a small-business owner who works in the construction trades and prefers not to be identified, on any given day at 6:45 a.m. on Sacramento's 47th Avenue near the corner of Martin Luther King Jr. Boulevard, hundreds of men, most seemingly from the provinces of Mexico and Central America, wait to do manual labor of any kind. The unwritten rule: you must pay them a bare minimum of \$8 an hour.

"If you stop a van and open a door," he notes, "10 of them will pile in before you know it."

And while he admits the toughening laws may affect certain kinds of businesses, they won't be felt by the men on the street and those who hire them. "The federal government doesn't require small businesses to be cops. A worker shows you an ID that looks legitimate, you make a copy, put it on file and you've done what you can." 

Keeping It Legal

Unknowingly hiring illegal immigrants can subject a business owner to severe penalties or a Department of Labor audit. Immigration attorney Clarence Mamarril recommends using this checklist when evaluating potential workers for employment:

- 1) Does the candidate have at least one of these Type-A documents that establish proper identification and employment eligibility?
 - United States passport (expired or unexpired)
 - Certificate of U.S. citizenship
 - Certificate of Naturalization
 - Unexpired foreign passport with I-551 stamp
 - Legal Permanent Resident card with photo (also known as a "green card")
 - Unexpired work authorization card
- OR at least one Type-B and one Type-C document?
 - Type-B documents include: A valid driver's license, a state identification card, a school ID card or a U.S. military card
 - Type-C documents include: a U.S. Social Security card, an original/certified copy of a U.S.-based birth certificate, a U.S. citizen identification card, a resident citizen ID card or an unexpired U.S. Citizenship and Immigration Service employment authorization document

2) Are the documents provided authentic?

Check for a hologram on the state driver's license. Legal permanent resident cards should have an embedded hologram, a picture, an identification number and a magnetic strip on the back of the card.



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3) Did your new employee file an Employment Eligibility Verification (I-9) form?

This form helps shield an employer from any potential liability if it is later discovered that he/she hired an illegal immigrant.

4) Did you observe all anti-discrimination laws?

Employers cannot specify any particular Type A/B/C document they will accept. Also, if the documents look authentic, they should not question the authenticity as this may be viewed as discrimination.