

Review your I-9 records: ICE continues applying heat to employers

The odds that federal agents will scrutinize your work authorization practices and paperwork keep going up.

In Fiscal Year 2019 (which ended Sept. 30), U.S. Immigration and Customs Enforcement opened 6,812 new investigations into employers suspected of violating immigration laws—everything from hiring undocumented workers to making errors on their I-9 Forms. That's a 14% increase from 2018, but a whopping 400% jump from the number of investigations filed in 2016 and 2017.

While most media attention on President Trump's immigration crackdown has focused on efforts to build a wall on the southern border, this data shows the administration's simultaneous emphasis on erecting a "virtual wall" to block undocumented workers from getting and keeping jobs.

To bolster the enforcement effort, ICE has increased its technology efforts by electronically scanning I-9s to flag suspicious activity. And the agency made a formal budget request last year to hire dozens more junior compliance officers to audit employers' I-9 records and cut into a sizable backlog of pending I-9 audit reviews.

Despite the spike in enforcement, the number of employers (managers, execs, HR directors) arrested for hiring undocumented immigrants has actually declined each year since 2016. Only 40 employers and managers were arrested last year, down from 72 in FY2018.

That may be changing. ICE Deputy Director Matthew Allen told *The Wall Street Journal* that the agency hopes to "arrest many more employers" in the coming years. Allen admitted it's "much more difficult and longer-term to get employers and managers in the company charged," because federal law requires investigators to prove that the employer knew about the workers' illegal status.

Advice: Review your I-9 records before the feds show up to conduct their own audit.

Yes, you can require Social Security number to hire

Some people refuse to use a Social Security number based on their religious beliefs. However, employers must know an employee's Social Security number to comply with federal tax and immigration laws. That's why you may refuse to hire someone who won't provide you with an SSN.

Recent case: Robert applied for a job but refused to turn over his Social Security number, claiming it is the "Mark of the Beast" as described in the Bible's book of Revelation. He sued, alleging Title VII religious discrimination, apparently believing his belief should be reasonably accommodated.

The court tossed out the case, noting that the employer had no choice but to use the number to comply with federal laws. (*Lowman v. NVI, LLC*, WD NY, 2019)

Employers must accommodate religious beliefs, but not if doing so poses an undue hardship. Breaking tax and immigration laws would certainly be an undue hardship.

Asylum for immigrant safety whistleblowers?

Over the years, courts have ruled that undocumented workers who report unsafe working conditions enjoy many of the same protections as whistleblowers who are U.S. citizens. That doesn't mean retaliation never happens.

The issue was recently in the news, when a hotel under construction in New Orleans collapsed, killing three workers. One of the survivors, an undocumented man from Honduras, claimed he had told supervisors several times before the Oct. 13 collapse that the floor he was working on was at least two inches off level.

Two days after the accident, Delmer Joel Ramirez Palma was arrested; he was deported on Nov. 29.

There is no direct evidence that Ramirez Palma's employer reported him, but he was expected to cooperate with OSHA investigators seeking to establish what happened and who was to blame. Ramirez Palma's attorneys and immigrant rights groups have suggested the quick action was not coincidental, noting that cooperating with OSHA will be much more difficult from 2,200 miles away.

U.S. Immigration and Customs Enforcement insists Ramirez Palma's deportation had nothing to do with the OSHA investigation. However, it occurred before lawyers and other federal authorities had a chance to seek an S-5 visa for Ramirez Palma.

S-5 visas are reserved for immigrants who might be required to testify in criminal proceedings. They are good for three years. Law enforcement officials can petition the Department of Homeland Security to grant permanent residency for S-5 visa holders.

Unintended consequences? The New Orleans case could trigger ripples that reach into many workplaces. Immigration lawyers have already begun speculating about strategies that encourage undocumented workers to look for potentially criminal safety hazards at work.

If they bypass internal systems and report their concerns directly to state and federal safety regulators, the attorneys argue, their clients could qualify for the protection of an S-5 visa.