

Rules on illegal workers stir fears

Farming, restaurant and other industries would have to scramble for laborers under planned regulations, critics say.

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A planned federal crackdown on the hiring of undocumented workers has sparked fears that farmers will be left without workers to pick crops, restaurants without cooks and dishwashers, and small businesses without a ready source of casual labor.

The new rules also are likely to reduce employment in the construction, janitorial and landscaping industries, analysts say.

"It is going to be very difficult on this industry," said Paul Simonds, spokesman for Irvine-based Western Growers, whose members grow and pack about 90% of the produce and nuts produced in California.

The Department of Homeland Security is about to issue new regulations on how businesses must respond when informed that there are discrepancies in a worker's tax records. Many businesses simply ignore such notices now, but under the new rules, employees would have a limited time to contact the Social Security Administration to correct the information. If they do not, employers must fire the worker or face fines.

The rule would transfer more responsibility for enforcement to companies -- part of a Homeland Security effort to break through what some officials say is complacency in the corporate world about illegal workers.

Industries claiming that the rules will undermine the economy are using "scare tactics" to fight the plan, said Russ Knocke, a Homeland Security spokesman.

"Are they suggesting that we should not enforce the law?" Knocke asked. "We have been tough about this, and we are going to be even tougher. There are employers who have gamed the system for years, and the regulations are going to fix that."

Western Growers, which also represents the majority of Arizona farmers, plans to meet with Homeland Security officials Monday to get a better assessment of how the regulations will affect agriculture.

Marc Grossman, spokesman for United Farm Workers of America, believes the rules will be catastrophic for agriculture workers and farms.

"If you were going to fire everyone whose Social Security numbers were not in order, you will lose a majority of the workforce . . . as much as 90% depending on the area," Grossman said.

He said that was why the UFW and farm groups had supported the AgJobs legislation that's stalled in Congress.

If passed, that two-part bill would make falsely documented agricultural workers eligible for a "blue card" if they can demonstrate that they have worked in domestic agriculture for at least 150 workdays over the previous two years. The blue card would entitle the worker to temporary legal resident status, and holders would have to pass criminal background checks. The second part of the legislation would simplify and expand a guest worker program for agriculture.

Meanwhile, the planned Homeland Security regulations also have spooked the restaurant industry, which has nearly 13 million workers and is one of the largest private employers in the U.S.

"We still would like Congress to be the one that sets immigration policy," said John Gay, senior vice president of the National Restaurant Assn.

The trade group believes the new regulations should be part of "a broader solution" that would deal with the status of the undocumented workforce and ensure a supply of workers in what Gay characterized as an increasingly tight labor market for restaurants.

"We fear that this will result in the industry having to let workers go. It will have a bigger impact in certain areas like California, Texas and Florida than in others," Gay said. California has at least 2.5 million illegal immigrants, the Pew Hispanic Center estimates.

Small-business groups also are protesting the rules, saying that it puts the burden of enforcing immigration on the tiniest companies.

"Yes, we need to get a handle on this issue, but you can't expect small-biz owners . . . to be border police. It's just an extremely difficult position to put small businesses in," said Todd McCracken, president of the National Small Business Assn., which represents 65,000 firms.

Recently, more employers have been using the Department of Homeland Security's Basic Pilot program, which enables them to check the validity of Social Security numbers online. As long as the name and the Social Security number are legitimate, the system will indicate that the person is authorized to work. However, law enforcement agencies have reported that undocumented workers are increasingly using stolen Social Security numbers to outmaneuver the system.

Scott Hauge, president of the trade group Small Business California, said a rule requiring workers to be fired if they can't quickly reconcile discrepancies could expose companies to new liabilities.

"If things don't get worked out in a couple months, we're just supposed to fire someone?" Hauge asked. "What happens if the data is wrong and you fire them? Does that open you up to a wrongful-termination suit?"

Knocke, the Homeland Security spokesman, disagreed. "If employers act in good faith and make

an effort to comply with the law, there will be a safe harbor provision for them," he said.

Businesses should not be surprised by the new enforcement initiative, Bush administration officials said. The government has been sending out the "no-match" letters to employers since 1979.

"There's nothing different with the letter," said Mark Hinkle of the Social Security Administration. "What is different is an upcoming Homeland Security regulation that will be clarifying what businesses need to do if they receive a no-match letter."

No-match letters may be sent when there are inconsistencies between a worker's tax forms and records -- such as an individual's birth date or name spelling -- that the Social Security Administration has on file.

In 2005, the administration sent 8.1 million letters to workers at their home addresses, asking them to resolve differences. About 1.5 million letters were mailed to the workers' place of employment when no home address was available.

For businesses that had more than 10 employees with discrepancies in their record, a third type of letter is mailed. Last year, the administration mailed 138,000 of those letters to employers, Hinkle said. This year, they anticipate a slight uptick to 140,000.

With the Homeland Security crackdown, Hinkle said the agency was expecting "some increase" in phone calls and foot traffic at its 1,300 offices across the country. "We really don't have a projection," Hinkle said. "We handle millions of phone calls and millions of visitors and millions of claims a year. So we'll deal with it as it occurs."

Although many employers have still to learn the details of the regulations, the major trade groups protesting the action expect Homeland Security to act soon despite industry objections.

"It seems inevitable," Gay said.

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