

Resources

Homeland Security Continues Enforcement Efforts Against Companies Employing Undocumented Workers

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The United States Department of Homeland Security, working in concert with U.S. Immigration and Customs Enforcement (ICE), is maintaining its crackdown on U.S. employers who fail to properly verify their workers are authorized to work in the U.S. According to ICE's figures, in Fiscal Year (FY) 2011, it:

- Conducted I-9 audits of 2,496 employers, up from 503 in FY 2008;
- Initiated 3,291 worksite enforcement cases, up from 1,191 in FY 2008;
- Criminally arrested 221 employers, up from 135 in FY 2008;
- Issued 385 Final Orders for \$10,463,987 in fines, up from 18 Final Orders for \$675,209 in fines in FY 2008; and
- Debarred 115 individuals and 97 businesses, compared to zero individuals and zero businesses in FY 2008.

Some recent examples of these heightened enforcement efforts are highlighted below.

Three Atlanta Business Owners Sentenced in Tax, Immigration Fraud Case

Three owners of an Atlanta meat supply business were sentenced to serve time in federal prison on charges of tax and immigration fraud on February 22, 2012. The sentencing followed a joint investigation by ICE Homeland Security Investigations (HSI) and the Internal Revenue Service (IRS).

Rhett Maughon, 49, was sentenced to five years in prison to be followed by three years of supervised release, and ordered to work 100 hours of community service. Rafael Villarreal, 42, was sentenced to five years in prison to be followed by three years of supervised release, and ordered to submit to removal proceedings with ICE following completion of his prison term. Marcus Maughon, 47, was sentenced to three years in prison to be followed by three years of supervised release, and ordered to work 100 hours of community service. Each defendant received the maximum sentence of imprisonment authorized by law.

According to information presented in court, from early 2001 until June 2006, the defendants and two others jointly owned Atlanta Food Authority doing business as Atlanta Meat Company, which was in the business of supplying meat products to restaurants throughout the Southeast. The defendants did not record all the cash received on the company's books, and instead used the cash to pay themselves and employee wages.

The defendants did not report the cash wages to the payroll service they used to prepare the company's weekly paychecks, resulting in false and fraudulent quarterly tax filings and underpayment of withholding taxes. In addition, the defendants failed to disclose the cash wages to the accountant who prepared the company's corporate tax returns, therefore, the corporate returns for 2005 and 2006 were false and fraudulent. Each defendant also failed to report the cash he received as income on his personal tax returns for 2005 and 2006.

The company's employees who were paid entirely in cash were illegal aliens who lacked authorization to work legally in the United States. A number of the employees who were paid partly in cash and partly by check were also illegally present in the United States and were not authorized to work in this country.

Maughon and Villarreal each pleaded guilty to a conspiracy count charged in a superseding information. Maughon pleaded guilty to filing a false individual income tax return for the 2005 year.

Two Companies Admit to Hiring Illegal Aliens; Each Forfeits \$2 Million

Atrium Companies, the owner of Houston-based Champion Window and Advanced Containment Systems Inc. (ACSI), agreed to comply with revised immigration compliance programs and pay \$2 million as forfeited funds to the Department of Homeland Security (DHS) on January 24, 2012. Both had received multiple notices from the Social Security Administration (SSA) known as "no-match letters," which indicated employee names and Social Security numbers did not match SSA records. The companies failed to take corrective measures, resulting in the continued employment of the undocumented aliens resulting in about \$2 million in wages paid to these undocumented aliens between 2005 and 2009. Champion derived at least \$2 million in revenue from the sales of its products manufactured and services provided with the use of its predominantly illegal workforce from 2006 through 2010.

In February 2011, ICE HSI completed an I-9 audit of ACSI, revealing that from 2005 to 2009 about 44 percent of the workforce at ACSI was undocumented—many employed with numerous "egregiously suspect" identification documents, including misspellings of agency names and/or containing the words "novelty item."

Champion had engaged in a pattern and practice of hiring undocumented workers for years prior to its acquisition by Atrium Companies in June 2006. Champion managers falsely attested on I-9 forms that work authorization documents presented by new hires appeared genuine. An audit conducted by HSI in early 2011 revealed that about 269 of Champion's 451-person workforce consisted of undocumented aliens.

San Diego Car Wash Executives Plead Guilty to Hiring Illegal Alien Workers; Agree to Forfeit More Than \$85,000

The owner and manager of Betty's Hand Car Wash of San Diego pleaded guilty January 19, 2012, to knowingly hiring illegal aliens following a seven-month investigation by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI).

Owner Ju Hea Kim, and business manager Sun Jae Lee both pleaded guilty to the felony offense of hiring at least 10 illegal aliens from 2010 to 2011. Each faces a maximum penalty of five years in prison and a fine of up to \$250,000.

According to the plea agreement, the company agreed to forfeit \$85,610, which constitutes the proceeds gained from the company's illegal hiring practices. Additionally, at the upcoming sentencing hearing in April 2012, prosecutors will recommend an eight-month prison term for Lee, while Kim faces revocation of his visa and deportation to South Korea. The plea agreement also recommends that Kim and Lee each pay a fine.

Dayton-Area Restaurant Fined After I-9 Audit

The El Rancho Grande restaurant in Germantown, Ohio, was fined more than \$20,000 on January 19, 2012, for failing to comply with employment eligibility verification requirements following an investigation and audit of Form I-9 documents by ICE HSI and the Germantown Police Department.

The audit revealed violations of the Immigration and Nationality Act (INA) and severe deficiencies with the company's employment records. In July 2011, ICE HSI issued a Notice of Intent to Fine. El Rancho Grande reached a fine settlement with ICE HSI in December for the amount of \$21,692.

As part of the settlement, the company was required to take measures to revise its immigration compliance program, and has agreed to begin implementing new procedures to prevent future violations of federal immigration laws.

St. Louis Industrial Supply Company Sentenced for Employing Illegal Aliens

A St. Louis, Missouri, industrial supply company, J&J Industrial Supply Inc., was sentenced January 17, 2012, on charges of employing illegal aliens after pleading guilty in October 2011, to knowingly and intentionally hiring more than 10 illegal aliens in a 12-month period.

As part of the previous plea, J&J Industrial Supply Inc. agreed to forfeit \$150,000 and a 2011 Toyota Highlander used to facilitate the illegal activity. The company also received one year of probation, and it paid the \$150,000 forfeiture at sentencing.

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During a 12-month period, the company employed 10 or more illegal aliens. By employing these illegal aliens the company realized proceeds of about \$150,000 during the time of the offense.

About Dykema

In addition to the services we provide related to obtaining and maintaining legal immigration status for our clients and their employees, Dykema provides counseling related to employment eligibility and employer sanctions including defending audits of Form I-9 compliance by federal authorities.

Please contact James G. Aldrich at 248-203-0583 if you have any questions or would like more information about Dykema's Immigration practice.

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