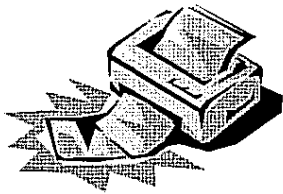


Recent Immigration Issues Affect Increasing Number of Employers

By: Megan M. Ruwe



In This Issue

- ◆ Recent Immigration Issues Affect Increasing Number of Employers
- ◆ Register for Upcoming Seminar: Lawfully Protecting Your Business Assets
- ◆ Information for SHRM Annual Conference Attendees in Washington, DC

Since September 11, 2001, immigration issues and their impact on employers have gained a great deal of visibility in the Upper Midwest, and throughout the country. With recent rallies and debates regarding proposed federal immigration legislation, employees have become more aware of their rights under federal labor law and state and federal discrimination law, and government agencies have stepped up enforcement of immigration laws against illegal immigrants and their employers. Failure to comply with current immigration laws may result in civil lawsuits and criminal charges, such as prison time, or monetary sanctions against both the employer and individual managers or agents, and proposed legislation would substantially increase these sanctions.

Discipline of Immigration Rally Participants

Although media coverage of the April and May, 2006 immigrant demonstrations and the debate over proposed legislation has diminished, employers will continue to feel the effects of these immigration-related events, and passage of new legislation with more serious penalties for employment of illegal aliens is likely. Section 7 of the National Labor Relations Act (“NLRA”) grants employees the right to engage in “concerted activities for the purpose of collective bargaining or other mutual aid or protection.” Section 8(a)(1) prohibits interference with the rights protected in Section 7. An employee’s participation in the May, 2006 rallies or similar activities could arguably be construed as promoting the “mutual aid and protection” of immigrant co-workers, particularly if employer policies or practices are a focus of the activity. Thus, employers who discipline employees who miss work to participate in such rallies may violate the NLRA by precluding employees from exercising “mutual aid or protection.” Unfair labor practice charges based on such disciplinary actions have already been brought against some employers.

For example, on April 28, 2006, the Change to Win Labor Coalition filed unfair labor practice charges against twelve different employers on behalf of employees discharged for attending pro-immigration rallies that took place on April 10, 2006. Change to Win alleged that the employers violated employees’ rights to engage in concerted activity for the purpose of “mutual aid and protection.” Similar charges are likely, as Change to Win is currently attempting to identify additional employees who were discharged for attending similar pro-immigration rallies.

Employers Face Criminal Charges for Employment of Undocumented Illegal Aliens

Since April 2006, the United States Immigration and Customs Enforcement Agency (“ICE”) has brought several criminal charges against businesses, business owners, and supervisors/managers responsible for the employment of illegal aliens. These charges have largely affected employers in the construction, manufacturing, and food service industries.


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● On May 2, 2006, ICE charged Stucco Design, Inc. and its owner with harboring illegal aliens, transporting illegal aliens, money laundering, and making false statements after it discovered that Stucco Design employed four illegal aliens at a construction site in Dickinson, North Dakota. When Stucco Design hired the employees, it failed to request proper I-9 documentation to establish that they could work legally in the United States. ICE then discovered that the employees were illegal aliens.

● On April 19, 2006, ICE targeted a corporation with Minnesota ties when it arrested nine current and former managers of IFCO Systems North America, Inc., a pallet services company. ICE charged seven of the managers with harboring illegal aliens for financial gain, while two were arrested for criminal document fraud violations. ICE also apprehended 1,187 illegal alien employees at over forty IFCO locations throughout the United States. The investigation began when ICE learned that illegal alien IFCO workers had presented false social security cards, destroyed their W-2 tax forms, and intended not to file federal or state tax returns.

● Small employers have also been affected by ICE indictments. In Baltimore, owners of three sushi restaurants were charged with employing illegal laborers to maximize profits and purchase new homes and vehicles for themselves. Two of the defendants pled guilty to criminal charges and agreed to forfeit over \$1 million; they also face sentences of up to thirty years in prison. The third owner pled guilty to employing illegal aliens.

Take Steps to Demonstrate Compliance and Reduce Exposure

No employer is immune to ICE investigations or immigration-based charges or litigation. At the same time, employers who over-react and take steps which appear to screen out applicants or employees based on national origin or ethnic background, can face local, state or federal discrimination charges or lawsuits. To limit civil or criminal immigration exposure, employers should strictly follow current I-9 documentation procedures at the time of hire and verify employees' social security numbers if any discrepancy is uncovered at that time or

any subsequent time. Additionally, employers may want to conduct an internal audit of current employee files to confirm that valid I-9 procedures were followed. As employees continue to participate in immigration-related rallies and similar activities, employers should consult legal counsel before taking adverse action against the employees. Finally, employers should be certain they have up-to-date, documented, non-discrimination policies, complaint procedures and hiring practices to avoid claims that employer scrutiny of the legal status of immigrants is a "cover" for discrimination against those of Hispanic, Asian or other minority ethnic or national origin.

Employers concerned about immigration-related issues are invited to consult the law firm of Seaton, Beck & Peters, P.A. Call 952-896-1700 and ask for any available attorney. We will be happy to assist you with a no-cost initial consultation.

REGISTER NOW

FOR UPCOMING SEMINAR

LAWFULLY PROTECTING YOUR BUSINESS ASSETS

June 13, 2006

8:00 a.m. (registration) - 12:00 p.m.

Marriott, Minneapolis Airport

American Boulevard East, Bloomington, MN 55425

Cost: \$35.00

To register (or for more information) please visit our website at www.seatonlaw.com, contact Jennifer Blomberg at 952.896.1700, via e-mail at jblomberg@seatonlaw.com, or complete & fax attached registration.

ATTN: SHRM ANNUAL CONFERENCE ATTENDEES WASHINGTON, DC

If you are attending the conference, please join Seaton, Beck & Peters' fellow Worklaw Network attorneys at a presentation and reception on June 26, 2006, featuring Jathan Janove, author of "*Managing to Stay out of Court*". For more information or to RSVP, please contact Coni Crone at 503.248.1134 or ccrone@bullardlaw.com.

Fax, E-mail or "None of the Above?"

If you are receiving this *LawFax*, you or another member of your organization is a client, a member of one of the trade associations or chambers of commerce of which we are members also, or have requested a subscription to our periodic *LawFax*. If you'd rather receive our *LawFax* by e-mail, or if you no longer wish to receive it, please e-mail us (firm@seatonlaw.com) or call our toll-free number (800-268-5008) and we will change your *LawFax* subscription to e-mail or delete you from our database.

This communication is intended for general informational purposes only and is not intended to constitute legal advice with respect to any individual facts or circumstances. You are urged to consult with one of our attorneys regarding your own situation and your specific question. We would be happy to help!

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LAWFULLY PROTECTING YOUR BUSINESS ASSETS

DATE, TIME & LOCATION:

June 13, 2006
8:30 a.m. - 12:00 p.m.
(8:00 a.m. Registration and Continental Breakfast)

Marriott, Minneapolis Airport
2020 American Boulevard East, Bloomington, MN 55425

In today's environment, employers must take diligent steps to protect their business assets. Failure to take appropriate steps to protect business assets before, during, and after the hiring process may lead to unanticipated and significant losses. On the other hand, if an employer oversteps legal boundaries to protect their business assets, it may subject itself to myriad of lawsuits by applicants, employees, and former employees. This program will discuss lawful methods to protect your business assets through interviewing, background checks and computer forensics.

Legal Issues Associated With Protecting Your Business Assets

Tom Revnew – Seaton Beck & Peters, PA.

8:30 a.m. to 9:30 a.m.

Companies use a variety of methods to protect their business assets from the interviewing process to the use of employment policies and procedures. If these methods are inappropriately used, however, employers face unanticipated legal risks. This segment will cover legal issues for employers to consider in protecting their business assets.

Hire Smart and Win!

Donna Ploof – RHR Informational Systems

9:45 a.m. to 10:45 a.m.

Don't play Jeopardy when hiring. Hire Smart! You win, the company wins and the applicant wins. But getting the right applicant into your job opportunity can be hard work when faced with proper interviewing and screening of applicants. You'll receive valuable tips on smart screening and hiring procedures through background screening.

Who's Watching Your Intellectual Property – Why Should You Care?

Jeremy Wunsch, LuciData, Inc.

11:00 a.m. to 12:00 p.m.

Intellectual property theft and technology related crimes within corporations have skyrocketed during the past few years. In fact, more than ever organizations are finding themselves entangled in costly litigation caused by inappropriate use of computers. Get information on how to use data forensics/content monitoring tools that may help you avoid costly litigation and protect your business!

COST:

\$35.00 per person (payment in advance or at the door)

REGISTRATION:

To register please complete and fax back this registration form (fax: 952.896.1704), or contact

Jennifer Blomberg at 952.896.1700 or via e-mail at jblomberg@seatonlaw.com

Complete program materials and online registration available at www.seatonlaw.com.

Name: _____

Title _____ Company _____

Tel _____ Email _____

Additional attendees _____