Employer Liability of Hiring and Retention for Illegal Alien Employees

The law firm of Tucker Arensberg contributes this quarterly column focused on the legal issues that may impact our readers. Tucker Arensberg is a full-service law firm headquartered in Pittsburgh, Pa., USA. Servicing the legal needs of the iron and steel industry, Tucker Arensberg has also provided legal counsel to the Association for Iron & Steel Technology.

Author

W. Isaac Zimmerman, Associate,
Harrisburg, Pa., USA
+1.717.221.7971

Since taking office for his second term, President Trump and his administration have focused on increased enforcement of immigration laws with the stated goal of apprehending and deporting individuals who are in the United States illegally. The news is riddled with coverage of U.S. Immigration and Customs Enforcement agents removing individuals from cities, neighborhoods, places of employment, college campuses, and, in some cases, courtrooms.

As this hot-button topic continues to spin in the news cycle, some employers may find this time a good opportunity to audit and evaluate their hiring procedures to ensure they are protecting themselves from the hiring or retention of individuals who are in the United States illegally.

At first thought, one may consider the greatest area of liability to be those illegally entering the country from the southern border, and, depending on your field of employment, it may be. Alternatively, consider those individuals who were in the country legally and hired legally, but whose status has since expired, been revoked or has otherwise become invalid.

Employers are responsible for who they hire, their compliance with federal immigration laws — such as completing and maintaining I-9 documentation — and how their hiring practices impact their business. It should not be lost on employers that they may be held criminally or civilly liable for the hiring or retention of illegal individuals.

The Department of Homeland Security (DHS) provides a handbook for employers[1] that lays out the employers' responsibility to vet each applicant, obtain and retain complete and accurate I-9 forms, and the penalties for knowingly hiring or retaining an employee who is in the country illegally and not eligible to be employed.

Section 11.8 of the handbook lays out a "good faith" standard when determining if an employer knew the illegal immigration status of an employee. DHS classifies an employer as "knowingly" hiring an "unauthorized alien" if, after 6 November 1985, the employer "enters into, renegotiates or extends a contract or subcontract to obtain the labor of an alien you know is not authorized to work in the United States."

It can be understood by this definition that if someone was authorized to work in the United States but no longer is, DHS equates the continued employment of that individual to the employer initially knowingly hiring that employee illegally.

The penalties surrounding these regulations are steep. Federal law provides that if the government can establish a systemic pattern for the hiring or retention of illegal workers, fines may be issued, along with a sentence of up to six months'

[1] https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/table-of-contents.

TUCKER ARENSBERG Attorneys

If you have any questions about this topic or any other legal topics, contact attorney Thomas P. Peterson at +1.412.594.3914 or tpeterson@tuckerlaw.com. Please include your full name, company name, mailing address and email address in all correspondence.

Views expressed in Legal Perspectives do not necessarily reflect those of *Iron & Steel Technology*.

imprisonment. Employers could also be fined per occurrence, significantly impacting the employer's financial resources.[2]

Civilly, the government can also sue employers for permanent or temporary injunctions, restraining orders, or other sanctions against businesses and, in some cases, their owners. A court may also remove or suspend a business license.

Additionally, Section 1324 of the U.S. Code extends the law in certain instances to contracted workers so as to prevent employers from outsourcing work to companies that are known to use unauthorized workers. This prevents employers from simply subcontracting out work to known illegal aliens and expands an employer's liability when doing business with other organizations.[3]

It also highlights the importance of clearly outlining in staffing agency agreements the contractor's responsibility to comply with I-9 requirements and supply only workers who are authorized to work in the U.S.

So, how can employers defend against those penalties? A good-faith defense can be established where it can be shown that the employer complied with all I-9 requirements and truly did not have actual knowledge that the individual was prohibited from working in the U.S.

The code allows for consideration of the recruiting practices of the employer in good-faith analysis. Courts could find that if the pool of applicants from which the employer is recruiting is notoriously populated with illegal aliens, the employer knew or should have known that the individual(s) had a high likelihood of not being permitted to work legally.

DHS has repeatedly stated that increased scrutiny of employers will be ongoing in an effort to identify aliens who are working in the country illegally. After a brief moratorium of workplace raids, the Administration announced in June 2025 that it would resume deportation arrests of suspected illegal aliens at places of employment. Not long after, in September, the world watched as over 300 factory workers were detained at a Hyundai automotive plant in Georgia.

In light of the Administration's aggressive recruitment of new agents and updated quotas, employers are well advised to take proactive steps to ensure that they are completing I-9 forms properly and maintaining and storing those records in compliance with the statutory requirements (three years from the hire date or one year from the termination date, whichever is later). Employers could also create a tracking system listing employee I-9 compliance information and, where the employment authorization is time-limited (such as a foreign worker on a temporary work visa with a specific term), the date of the authorization's expiration. Periodic audits and self-correcting errors, in compliance with the specific procedures for doing so, are also wise and help to show an employer's good-faith efforts to comply with the law. ✦

[2] 8 U.S.C. § 1324 Unlawful Employment of Aliens ("U.S. Code").
[3] 8 U.S.C. § 1324 (a)(4).