

Friday, August 31, 2007

Employment crackdown

Companies adjusting to new hiring procedures from Homeland Security

Jacksonville Business Journal - by [Dolly Penland](#) Staff Writer



James Crichlow

Wayne Pates, acting foreman at TLC Total Lawn Care, had to go through a pre-employment screening before he was hired. It

Although no one knows for sure, the number of illegal immigrants in the U.S. is estimated to be between 7 million and 20 million, and most of them have jobs. Now, U.S. Immigration and Customs Enforcement, the largest investigative branch of the Department of Homeland Security, is cracking down on unauthorized workers.

The new DHS policy makes employers responsible for knowing their employees' immigration status, and promises stepped-up enforcement of penalties against employers who either knowingly or inadvertently employ illegal workers. Although many might believe that only industries with a high percentage of illegal workers such as the agricultural, hospitality and construction industries will be affected, every business needs to review the requirements.

"I would recommend that they make sure their I-9 forms are updated," said Bob McKenzie, president of McKenzieHR. "Every employer, regardless of industry, regardless of size, is required to fill out an I-9 [in compliance with] the Immigration Reform and Control Act of 1986. On that form, the employer must verify the identity of the individual, usually through some kind of picture identification. We deal with a lot of small employers, and 95 percent of the I-9s we look at are not done correctly. They're just not filling them out correctly, or at all."

Make sure each employee's form is completely filled out, and keep all I-9s in a secure location.

James Hawkinson, co-owner of TLC Total Lawn Care, requires not only that potential new workers provide proper identification but also that they undergo a pre-employment background check. "That pretty much screens out everyone" not authorized to work in the country, he said. "We have people come in all the time asking about employment, saying they're working for the competition, but they don't have the identification we need."

The new DHS regulations will target undocumented workers through the Social Security Administration's no-match letter program, where the SSA notifies a business that the name and Social Security number given by an employee don't

match. If a business receives such a letter, first check to make sure the mismatch is not the result of a clerical error.

"Double-check first," McKenzie said. "It might be a typo or you transposed two numbers or someone got married and changed their name but the Social Security Administration wasn't notified."

If it is a simple mistake, the employer has 30 days to contact SSA with the correct information and then verify that the name and number in SSA's database match. If it's not a typo, ask the employee to confirm the information.

"Go to the employee. Say, 'This is what I have and is this correct?'" said Lori Mans, an attorney with the Jacksonville office of Constangy, Brooks & Smith LLC. "If the employee says it's not, then get the correct information. But if the employee says that it is correct, the employer can ask the employee to pursue the matter at the local Social Security Administration office."

Make sure employees understand that they have only 90 days from when the employer received the no-match letter to resolve the matter with the SSA.

"If that doesn't work, and the employee is unable to resolve it or doesn't go [to the SSA], they have to choose between terminating the employee or face the risk that basically the Department of Homeland Security finds they had knowledge of unauthorized employees," Mans said. "The other thing the employer can do is ask the employee to provide additional documentation [without the questionable Social Security number] and complete a new I-9 form."

Business owners are not expected to be experts in fraudulent documents if they appear to be genuine.

"Unless you have reason to suspect the documents they're providing are false, then really you're required to accept them in support of the I-9 form," Mans said. "The regulations say if you do this, it's a safe harbor for you unless you have some other reason outside of that" to suspect the employee is an illegal worker.

Mans also advises against firing someone based just on receiving a no-match letter. "Employers should consistently, as with any employee-related decision, enforce procedures and not apply them to employees of different national origins," she said. "They should apply them to all their employees for whom they receive a no-match letter."

The new rules, which take effect Sept. 14, have teeth. "Fines are usually what happens," Mans said. "Depending on the number of violations, it can be as much as \$11,000 per unauthorized [immigrant], and if it's a violation for document fraud, as much as \$5,000 per violation. Also, you can be imprisoned for as much as six

months. And, if convicted of harboring illegal [immigrants], it's a maximum of five years."

Hawkinson, who also hires some workers under the H-2B program, which allows foreign workers to work for U.S. employers temporarily during peak seasons, said he sleeps well at night knowing his company complies with the law.

"I think some of our competitors have more significant problems coming than they realize," he said. "They're not [hiring illegals] for altruistic reasons. They're doing it because they can't function in a regular world, so just doing it is an admission of failure. When [the new rules take effect], they're going to have to come up with a whole new way to manage their businesses. I think our industry will see significant increases" in price.