

Illegal Immigrant Hiring **By Heather Shore, Esq.¹ of Brown & Dunn, P.C.**

As the Presidential race heats up in the United States and debates are in full swing, each candidate attempts to win over the voters with his or her stance on hot issues such as the Iraq war, healthcare and, yes, immigration. While each candidate has a different stance regarding the issue of immigration, the candidates are not the only government figureheads that are discussing its effect on the economy. Both national and local legislators have introduced bills that would directly affect construction companies which employ unauthorized or illegal immigrants. This article does not condone or condemn the practice of hiring unauthorized or illegal immigrants; rather, it is written to inform you that construction companies may be impacted by current and future changes in immigration law.

Nationally, the Secure America through Verification and Enforcement Act (S.A.V.E.), H.R. 1088, was recently proposed to reduce the presence of illegal immigrants in the United States through increased border enforcement and by bolstering several existing interior enforcement methods. With respect to interior enforcement, which directly affects construction companies, changes to current employment verification are proposed. The major change would be the implementation of E-Verify, an electronic verification system that all employers would have to participate in. The process will provide a background check from a national databank for every applicant. This national databank of names and social security numbers would make it nearly impossible for illegal immigrants to be hired by companies because if the names and social security numbers do not match those contained in the national databank, then they are flagged within the system. The individuals whose names are flagged will have difficulty finding other employment within the United States.

Another bill impacting companies that routinely hire illegal immigrants was proposed on the state level in the Missouri legislature. Missouri Senator Scott Rupp from St. Charles recently introduced a bill that focuses on denying illegal immigrants benefits provided by the State and imposes strong punishments for both illegal immigrants and those who hire them. The bill states in part, “[a]ny employer, contractor, or subcontractor who knows or should have known that individuals in their employ are unauthorized aliens and are employed on a project in which the employer, contractor, or subcontractor has participated, involving state administered or subsidized tax credits, tax abatements or loans...shall be subject to a fine of up to *twenty-five thousand dollars* per illegal immigrant for the first offense, and up to *fifty-thousand dollars* per illegal immigrant for any subsequent offense.” (Emphasis added). If this bill becomes law in Missouri, contractors and subcontractors may be on the hook for thousands of dollars worth of fines if they hire illegal immigrants. This places a heavy financial burden on contractors and subcontractors to insure that the individuals they are hiring are legally working in the United States.

¹ Heather Shore is a shareholder with the law firm Brown & Dunn, P.C., located in Kansas City, Missouri. She is licensed in Kansas, Missouri and Colorado. She may be contacted at 816-292-7000, or by e-mail at hshore@browndunn.com.

In 2007, according to the Federation for American Immigration Reform (F.A.I.R.), the United States had approximately 13 million illegal immigrants living within the country. In Missouri alone, F.A.I.R. estimates that there were at least 65,000 illegal immigrants in 2007. The Pew Hispanic Center, a nonpartisan research organization formed to improve understanding of the U.S. Hispanic population, estimates that 14% of illegal immigrants in the United States work in construction. If this percentage was applied to the number of illegal immigrants in Missouri, it would equate to 9,100 illegal construction workers in Missouri alone. While it is apparent that not all 65,000 illegal immigrants are employed, fines levied on construction companies for the employment of 9,100 unauthorized workers would total \$227,500,000.00 under this newly proposed legislation.

While this bill is backed by many in the Missouri Legislature, not everyone is in favor of the bill because it has the potential of severely punishing businesses who “should have known” that it employed illegal immigrants. Senator Victor Callahan from Independence has taken the stance that employers who inadvertently hire illegal immigrants should not be punished for their negligence in checking paperwork. Callahan recently stated: “We don’t want to go after responsible contractors who acted in good faith. But we can place an affirmative requirement on employers to check documents, and we can pursue those employers that don’t.” As can be seen, there will be strong arguments in favor of and in opposition to the proposed bill.

While neither proposed bills has been enacted, there are some current procedural safeguards that can be implemented to protect from inadvertently hiring undocumented workers. Most current laws regarding illegal immigration in the United States stem from the 1986 Immigration Reform and Control Act. That law places the burden on employers to verify employment status and created the I-9 verification process. The I-9 form is a two-part form which must be filled out by every potential employee in order to verify that the applicant is authorized to work in the United States. Verifying the authenticity of drivers’ licenses, social security cards and birth certificates also will reduce the probability that a company inadvertently hires an unauthorized worker.

In conclusion, construction companies should closely monitor the national and local debates over proposed new laws that may implement an immigration verification system or levy fines on employers who hire illegal immigrants. If the bills do indeed become law, it will impact construction companies throughout the United States and Missouri and will force them to be extremely diligent in checking records before hiring. And if the companies are not diligent enough and hire unauthorized workers, they may be levied with significant fines.