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JOB DESTRUCTION NEWSLETTER
by Rob Sanchez
September 14, 2005 No. 1330
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In Part one of this series, I discussed how the Dept. of Homeland security has waived the I-9 requirement, ostensibly so that flood victims who want a job but can't get documents can work. As far as DHS is concerned, there is no difference between a U.S. citizen who may have lost documents in the flood, and illegal aliens who violated our immigration laws to enter the U.S. - all of these people are lumped into the category of "undocumented workers".

According to immigration attorney Greg Siskind, employers have nothing to fear if they hire illegal aliens. Of course he didn't quite say it that way, but his attorney-talk is loud and clear for those who pay attention. Siskind obviously knows that if employers can't be penalized then they can hire whomever they want regardless of their immigration status.

Note that employers are still required to complete I-9 forms for new employees as much as possible but will not be penalized if documentation is not available.

In the news article below, an illegal alien named Hugo Martinez explains that he and many others are getting jobs as part of the hurricane cleanup effort. Thanks to the DHS, companies have nothing to risk by hiring illegal aliens, and thanks to Bush's reversal of the Davis-Bacon Act these same companies can exploit the illegals by paying them substandard wages.

So far, there's been little risk. The Department of Homeland Security has announced a 45-day period in which employers would not be fined for hiring undocumented workers. It said that was because many people had lost their proof of citizenship or legal residence in the storm.

Under current U.S. there are no provisions for giving illegal aliens work visas or amnesty, but of course these people have no respect for our laws or they wouldn't have come here illegally in the first place.

"If we are working and helping to raise this city, at least they should give us a work visa," said Manuel Armenta, a 44-year-old Mexican who came to Biloxi five months ago to do cleaning work at a hotel.

I included another article that gives employers advice on how to cheat the system.

Of course this advice won't be necessary in the so-called hurricane relief areas but it does raise the question why the DHS lifted the I-9 requirements when they are so easy to get around. Basically the I-9 regulations are a form of "don't ask, don't tell" that allows employers to hire illegal aliens. Employers are off the hook as long as they make sure that the illegals they hire have authentic looking documents such as forged Social Security cards and fake driver's licenses.

***** This advice is a classic! *****

You can show that the forgeries were good enough to fool a reasonable person - you. And, keep I-9s and associated documentation in a separate filing cabinet from other business and personnel records. In the (hopefully) unlikely event of an INS raid, don't expect federal agents to sit down on the floor in a circle and sort through your files to separate I-9s from everything else.

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<http://www.sanluisobispo.com/mld/sanluisobispo/12634975.htm>

Posted on Tue, Sep. 13, 2005

Undocumented aliens rebuilding Biloxi, say they deserve visas

E. EDUARDO CASTILLO
Associated Press

BILOXI, Mississippi - As Biloxi rises from the devastation of Hurricane Katrina, it is doing much of it on the backs of undocumented foreign workers. Some are starting to suggest that their contributions are worth at least a temporary visa.

"If we are working and helping to raise this city, at least they should give us a work visa," said Manuel Armenta, a 44-year-old Mexican who came to Biloxi five months ago to do cleaning work at a hotel.

His old workplace - and his apartment - are now in ruins, but the hurricane created plenty of new jobs: cleaning up the hotels and casinos that fed much of the economy and putting new roofing on buildings of all sorts.

President Bush long ago proposed allowing more immigrants to work in the United States legally, but so far his ideas haven't gotten past Congress.

Many migrants living here illegally constantly worry about being detained and expelled.

A visa "would help us to not have fear," said Hugo Martinez, 37, who has been working alongside Armenta.

So far, there's been little risk. The Department of Homeland Security has announced a 45-day period in which employers would not be fined for hiring undocumented workers. It said that was because many people had lost their proof of citizenship or legal residence in the storm.

Martinez said that many of the people he knows working in hurricane cleanup and roofing are undocumented.

Both Armenta and Martinez said the main thing is to earn a living, regardless of their immigration status.

"But being legal, one could be here without distrust," Martinez said.

Jose Martinez, a 40-year-old Guatemalan, said the U.S. government should somehow recognize the contribution that undocumented workers are making to rebuild hurricane damaged areas.

"Even if it was just a temporary permit, at least we could get insurance," said the former hotel worker, now laboring to remove debris at a shrimp plant.

John Keeley, director of communications for the Center for Immigration Studies, a nonprofit think-tank dedicated to lowering illegal immigration to the United States, said the immigrants' pleas "illustrate their desperation."

"The fact that they are laboring under adverse conditions doesn't change the law," he said. "They are working for profit. It's important work, but it's no less illegal."

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<http://www.ilw.com/articles/2005,0915-siskind.shtm>

Can employers hire an individual who has no personal documents for I-9 Employment Eligibility Verification?

The Department of Homeland Security (DHS) announced on September 6, 2005 that it will refrain from initiating employer sanction actions for the next for 45 days for violations of I-9 Employment Eligibility Verification procedures. U.S. employers are responsible for completing and retaining documents from hired individuals. Regulations require employers to verify employment eligibility and identity through original documents presented by employees.

Due to the losses caused by Hurricane Katrina, many individuals have lost documents required by this procedure. Also, many government agencies in the

affected regions have suffered destruction or damage so that many individuals are unable to apply for replacement documents.

The DHS will not enforce this procedure for the next 45 days so that employers can hire individuals evacuated or displaced from affected areas, otherwise eligible for employment, but lacking personal documents. DHS will review this policy at the end of 45 days.

Note that employers are still required to complete I-9 forms for new employees as much as possible but will not be penalized if documentation is not available.

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<http://www.macon.com/mld/macon/business/12458494.htm>

Posted on Wed, Aug. 24, 2005

Do you have I-9 blues?

By Bill Clifton TELEGRAPH COLUMNIST

If you have not yet faced this situation, get ready: You hire an employee who completes an I-9 form and demonstrates to your satisfaction that he or she is eligible to work in the United States.

Then, after the employee is hired, you receive notification from the Social Security Administration that the Social Security number reported by you on behalf of the employee does not match the name contained in the administration's records.

You are concerned that your employee is an illegal alien. You do not want a run-in with the Immigration and Naturalization Service. On the other hand, you don't want to fire a legal employee and risk a lawsuit for national origin discrimination.

You don't want to make too big of a fuss because you have several employees in the same situation, and you are concerned they may all abandon their jobs and leave you in a jam. And, the fact of the matter is, your employees are hard workers you would like to keep.

What do you do?

One short article cannot cover all the details, but here is some general advice.

First, tell the employee about the problem. If the employee insists the number is correct, then notify SSA and ask it to re-verify its records. If the employee acknowledges the number is incorrect, ask for the correct number.

Note the correct number on the I-9 and report it to SSA. If the number is correct, you have no more problem. Termination of employment may be warranted if SSA subsequently notifies you that the number still is not correct.

If an employee offers you additional documentation instead of a new Social Security number, then verify the documentation and note it on the I-9. And remember, your employees cannot be required to show you their Social Security cards. Inspect the cards when they are volunteered, but don't ask or demand that the cards be presented. And, whatever you do, don't make one group of employees satisfy more stringent requirements, or provide more forms of proof, than you require from other employees.

Regardless of the forms of identification provided by your employees for I-9 purposes, make sure to keep copies and place them in your file. That way, if you are later accused of hiring illegal aliens, you can point to the copies as proof that you made a good-faith effort to verify employee eligibility.

You can show that the forgeries were good enough to fool a reasonable person - you. And, keep I-9s and associated documentation in a separate filing cabinet from other business and personnel records. In the (hopefully) unlikely event of an INS raid, don't expect federal agents to sit down on the floor in a circle and sort through your files to separate I-9s from everything else.

The feds will haul away the entire cabinet and every other related cabinet. It may be a very long time before you see your files again.

Bill Clifton is a management employment lawyer in Macon with the national labor firm of Constangy Brooks & Smith.

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