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Every Lawyer's Survival Guide to U.S. Immigration Law in 2007

It's not just for immigration lawyers any more

This is the first of a multi-part series on how the reach of U.S. immigration law increasingly impacts other legal areas, sometimes creating opportunities, and, more often, traps for the unwary.

Today's installment will be the first of two of interest to any lawyer with business clients. It focuses on the potential jeopardy of businesses with employees, or those which hire independent contractors. Part two, appearing next week, will cover recent developments on satisfaction of I-9 paperwork requirements, employment verifications systems such as the Pilot Automated Verification Program, handling Social Security no-match letters, how to avoid antidiscrimination actions, and document fraud.

By Stephen M. Brent

March 5, 2007

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Poor Donna Lake. She didn't know she was playing with fire.

Lake, 45, the human resources director of the Omaha, Neb. manufacturing firm Plastrglas was charged with inducing an illegal immigrant to enter or reside in the United States and harboring aliens, 8 USC 1324(a)(1)(A)(iv) and 8 USC 1324a.

It's a case that ought to send shivers down the spine of every human resources manager and their superiors. She faced 10 years in prison and a \$250,000 fine.

Her world collapsed after an Immigration and Customs Enforcement (ICE) raid on the company on Dec. 5, 2006, when 30 workers were arrested as illegal immigrants. The company manufactures and nationally distributes architectural ornaments, such as faux Grecian columns.

ICE is the immigration enforcement sector of the Department of Homeland Security, and carries on an enforcement function once the responsibility of the, now superseded, Immigration and Naturalization Service.

Lake was the victim of a taped conversation by a worker-turned-government informant. On Nov. 15, 2006, ICE agents placed a bug on this informant, a Plastrglas employee who set up Lake. ICE gave him a letter to show her stating the Social Security Administration determined his present number to be invalid.

When the worker asked Lake to change his work identity for a second time, Lake first asked the person if he feared deportation, then told him she would ignore the conversation. The investigation originated from information provided to ICE from an apparently disgruntled interpreter for Spanish-speaking Plastrglas employees. The interpreter said that on at least two occasions Lake allowed company employees to change documents establishing their eligibility to work in the United States.

The company, too, was charged under 8 USC 1324(a)(1)(A)(iii) (inducing an illegal alien to reside in the United States) and 18 USC 982(a)(6)(A)(ii)(I) (forfeiture). In a package deal, both the company and Lake, who was the only individual charged, pleaded guilty Jan. 12 in the U.S. district court in Omaha. The company pleaded guilty to harboring. Lake, in a separate proceeding, was allowed to plead guilty to a misdemeanor.

The U.S. attorney recommended penalties totaling \$110,000 against Plastrglas (\$51,000 fine, \$45,000 earnings forfeit, \$14,000 court costs) and a \$9,000 fine against Lake. The judge, who could also give Lake up to six months in jail, deferred sentencing until later this month.

Plastrglas was one of two recent high profile ICE actions against employers for illegal hires. The other, called Operation Wagon Trail, included a massive raid on Dec. 12, 2006, when about 1,000 ICE agents entered six Swift & Co. meat packing plants in Colorado, Nebraska, Texas, Utah, Iowa and Minnesota. Raiders arrived with search and arrest warrants for illegal immigrant workers.

ICE, in a press release issued the next day, reported the action resulted in the arrests of 1,382 workers, who were charged with immigration violations such as identity theft, and re-entry after deportation. ICE did not charge the Swift company.

These cases illustrate a dramatic escalation in ICE workplace enforcement policy. As ICE spokesman, Tim Counts, said regarding the Plastrglas case, it ““is a wake up call for employers in Nebraska. It should place business on notice that ICE will aggressively target employers who knowingly recruit, hire or harbor an illegal work force.””

The record bears out Counts’ statements: In 2000, about 500 individuals nationwide were arrested in workplace raids, while in 2006 the number increased eightfold to about 4,000, according to ICE figures.

Employers risk sanctions not only for the persons they hire, but also for those hired by independent contractors, as Wal-Mart learned to its cost last spring.

In March 2006, ICE penalized Wal-Mart for its complicity in allowing cleaning contractors to hire illegal aliens to provide cleaning services to the company. This landmark case concluded with an \$11 million civil settlement against Wal-Mart, and included a consent decree permanently enjoining the retailer from knowingly hiring, recruiting or continuing to employ unauthorized workers. The decree also required Wal-Mart to establish a means to verify that its

independent contractors are taking reasonable steps to comply with immigration laws.

ICE enforcement isn't the whole problem, however. Today, states and also some municipalities are coming down hard on employers suspected of hiring illegal workers. More than 500 pieces of legislation concerning immigrants were introduced in state legislatures throughout the country in 2006, at least 57 of which were enacted — a pace exceeding that of 2005, according to the National Conference of State Legislatures. Bills were enacted in 27 states. (It's worth noting that no such laws were enacted in New York.) Employment was the subject of 13 of the bills, enacted in 10 states.

See the second installment of the Immigration Law series in the March 12 edition of The Daily Record.

Stephen M. Brent, of the boutique immigration law firm Brent & Roberts, has practiced immigration law for nearly 25 years. He served twice as chairperson of the Upstate New York Chapter of the American Immigration Lawyers Association and has spoken and published widely on the subject.