

Audits: ICE turning blind eye to undocumented workers

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Immigration inspectors poring over the hiring paperwork of a California company last summer found that 262 employees — a whopping 93 percent of the total workforce — had “suspect” documents on file.

At an Illinois service company, auditors found dubious documents for nearly 8 in 10 of its 200-plus employees.

Inspectors examining records at a Texas manufacturing firm found suspicious paperwork for more than half of the 107 employees on the payroll.

But the companies didn't pay a penny in fines. None of the employers was led away in handcuffs. Immigration and Customs Enforcement officials didn't even issue them a formal warning, the agency's internal records show.

Instead, they were instructed to purge their payrolls of illegal immigrants. Armed with assurances that the employees with suspect documents were fired — or, in the Texas case, “self-terminated” — the ICE auditors closed the cases.

The cases are just a few examples included in ICE's internal records on its audit initiative, an enforcement program launched last July by Obama administration officials.

In the past, ICE had faced criticism for raiding job sites and rounding up large numbers of illegal immigrants for deportation, but not necessarily building cases against employers. With the audit initiative, ICE aims to scrutinize the hiring records of more businesses and impose what top officials describe as “tough” and “smart” employer sanctions.

But ICE audit records obtained recently through a Freedom of Information Act request show that the agency has, in many instances, failed to punish companies found to have significant numbers or high percentages of workers with questionable documents. In response to the public records request, ICE provided limited details on about 430 audit cases listed as “closed” by the agency through February.

The records show inspectors identified more than 110 companies with suspect documents, with nearly half of those having questionable paperwork for 10 or more workers.

No employers arrested

In total, the agency ordered 14 companies to pay fines of nearly \$150,000, but noted no employer arrests in connection with any of the cases. ICE agents in Atlanta also reached an agreement with a manufacturing firm that had questionable records on file for 574 of its 1,187 employees. The agreement allowed the company to avoid criminal prosecution on the condition that it complies with certain ICE requirements, though ICE would not provide additional details.

ICE also has refused to disclose the names or locations of companies found through the auditing process to have hired illegal immigrants, saying the businesses have a right to “personal privacy.” The agency did, however, include the location of the ICE field office assigned to each case.

ICE officials insist the audits and the agency’s broader strategy of aggressively pursuing employers are getting results.

‘You need evidence’

They point to the fact that this fiscal year the agency has ordered businesses to pay a record-setting \$4.6 million in civil penalties and has arrested more than 150 employers, managers or supervisors. However, some of the arrests stem from investigations going back several years. And the fines reflect enforcement actions that date as far back as 2007, including \$360,000 from the 2008 raid of a Houston rag factory and more than \$536,000 from a 2007 Ohio chicken factory raid.

ICE did not have a breakdown of how much of the \$4.6 million or how many of the arrests stemmed directly from the audit initiative, which began in July 2009.

Brett Dreyer, the head of ICE’s worksite enforcement unit, said that ICE attempts to determine which employers may have been duped into unintentionally accepting fraudulent documents from employees, and which ones are “turning a blind eye” to workers’ legal status.

“We look at each of these cases to see if they’re doing that, because that’s the main purpose of this program — check employers’ compliance and make sure that they’re obeying the law,” Dreyer said. “But you need evidence. You need facts. And if we don’t have that, we can’t charge them.”

Several gray areas

Immigration experts said some cases that seem egregious on the surface, like the company with 93 percent of its workers providing suspect documents, may actually have complied with the letter of the law and not be subject to penalties.

“You could have a vast majority of workers ultimately be found to be in undocumented status and yet still have a good faith employer simply because of the way the system works,” said Charles Foster, a Houston immigration attorney who specializes in employer compliance.

Foster said an employer cannot require more than a Social Security card that looks “reasonably genuine” on its face, or he risks committing an unfair employment practice.

Cost of doing business

In July 2009, ICE officials announced plans to serve 654 companies with notice of plans to audit their employment paperwork. In November, ICE announced plans to target an additional 1,000 companies.

In the two rounds of audits, inspectors examined more than 221,000 I-9 forms and identified 22,155 “suspect documents,” which can signal an employee is in the country illegally and lacks work authorization, or that the employer made a simple clerical error on the forms, ICE officials said.

But critics charge that ICE’s new strategy is soft on both illegal immigrants, who generally are not placed into deportation proceedings, and employers who can claim ignorance about fake documents and avoid penalties.

U.S. Rep. Lamar Smith, R-San Antonio, said the audits can be an effective part of an overall enforcement strategy, but that many employers consider them just a cost of doing business.

“They are not an effective deterrent on their own, and do nothing to bring justice in egregious cases,” Smith said.

Immigrant advocates estimated the audits, frequently referred to as “silent raids,” have cost thousands of workers their jobs. Angela Kelley, with the Center for American Progress, said the strategy appears to be more thoughtful than the worksite enforcement raids of the previous administration, but the impact is “equally as devastating.”

“You have this drip, drip, drip of I-9 enforcement audits all over the country, and it has the same effect — people don’t come to work the next day,” she said.