

ICE delivers hefty fines for paperwork errors

By Susan Carroll

Published 09:32 p.m., Saturday, February 18, 2012

Mike Weir remembers the summer day that federal immigration agents came to his small lightning protection company nestled among cow pastures in Katy and asked to review all of his company's hiring paperwork.

Weir said he knew what auditors would soon discover - that zero of his roughly 35 workers were illegal immigrants. Yet, Immigration and Customs Enforcement officials told him that - due to errors on his workers' employment eligibility forms - he would still have to pay a \$13,300 fine.

Right around the time Weir was cutting his penalty check to the federal government, ICE internal records show auditors closed another case involving a Dallas-area car wash where 70 percent of its 276 employees were found to have "suspect documents," signalling potential problems with their U.S. work authorization, ICE records show. That employer was issued a warning, but paid no fines and faced no criminal charges.

An analysis of nearly 800 audit cases ICE completed since October 2010 shows that roughly half of the 117 companies fined were not specifically penalized for hiring illegal immigrants, but for problems with the employment verification paperwork required for new hires.

A third of the total \$1.8 million in fines issued by the agency in those closed cases involved companies that auditors found had zero workers with "suspect documents," the records show.

"They're not looking for illegals. They're looking for clerical errors," Weir said. "It's a money grab."

ICE officials said some of the companies fined only for paperwork errors may have actually hired illegal immigrants, but left auditors with an insufficient paper trail to prove it by failing to fill out I-9 employment forms or to keep copies of important documents, like [Social Security](#) cards.

The fines for poor bookkeeping are part of an overall "deterrent strategy" to keep employers from hiring illegal immigrants, ICE officials said.

"Employers need to understand that the integrity of their employment records are as important to the federal government as the integrity of their tax files or banking records," said [Danielle Bennett](#), an ICE spokeswoman. "Much like the [IRS](#) uses audits as a deterrent strategy to prevent people from falsifying tax records, part of our strategy in conducting audits is to encourage businesses to comply with the law."

The records show that ICE aggressively targeted many of the 337 companies auditors found had suspect documents on file for at least one employee, issuing fines against 52 of them averaging

more than \$20,000 - nearly double the average fine for companies without suspect workers. The agency also sought criminal charges or debarment from future government contracts in a handful of cases included in the records.

Double standard?

But the records also show that many companies with scores of potential illegal immigrants on their payrolls escaped any punishment save a warning notice. Those included: a tile company in Sunnyvale with 165 workers with suspect documents; a Dallas tortilla company with 167 workers with suspect documents; and a frozen food manufacturer in McKinney with 130 workers with suspect documents.

Experts on the I-9 auditing process said it is often difficult to prove that companies knowingly hired illegal immigrants, even in what might appear to be egregious cases, since the law requires only that employers fill out an I-9 and make sure a Social Security card looks "reasonably genuine" on its face.

The apparent double standard has angered some small business owners, like Weir, who charged that ICE is ignoring the intent of the audits. He eventually negotiated his fine down to \$7,500, but it still hurt, he said.

"Where is the 'atta boy' for not hiring illegals? Where is the slap on the hand for not getting your paperwork right?" asked Weir, 53, who owns the company with his two sisters. "We are guilty of not dotting our I's and crossing our T's. We missed a few things, yes we did."

"But," he said, "we're not hiring illegals."

Before launching the audit initiative in 2009, ICE officials faced harsh criticism from immigrant advocates for raiding job sites and rounding up large numbers of illegal immigrants for deportation, but not necessarily building cases against employers. By ramping up the audits, ICE officials said they planned to target employers who "knowingly hire illegal immigrants" and promised "tough" and "smart" employer sanctions.

\$10 million in fines

Since the start of the 2009 fiscal year, ICE has opened more than 7,200 audits. Last fiscal year, the agency issued a record-setting \$10 million in fines in connection with the audits.

ICE has refused to provide specifics on the audits, including the names of the companies fined. In response to Freedom of Information Act requests, ICE released information on nearly 800 individual audit cases classified as "closed" from October 2010 through November, but withheld all information on pending cases. The records included more than 45 cases from the Houston area, ranging from major mining and manufacturing companies to mom-and-pop restaurants.

Bennett, the ICE spokeswoman, said ICE's internal audit records "should not be used to make statistical conclusions about ICE's work site program" since the agency has so many cases that are still under investigation.

Bennett added that ICE does not formally track fines that are levied for hiring illegal immigrants versus those for only paperwork violations.

Cheryl Machia, who runs a small dairy farm in Sheldon, Vt., said she was audited by ICE in November 2009. Agents did not find illegal immigrants on her payroll, the records show, but they did find significant problems with her I-9 paperwork, which she said was handled by an accountant who since has died.

"They picked them apart and nailed me for everything they could," said Machia, who hired a lawyer after ICE threatened to fine her nearly \$17,000. "They got me."

The lawyer negotiated the fine down to about \$5,000 but by then the lawyer's bill was up to \$17,000, said Machia, who has about 20 employees.

"It's been hell," she said.

Weir told a similar story. He said his I-9 paperwork was admittedly "sloppy." He hadn't thought to fill out an I-9 form for himself after he came to work for his parents some 16 years ago, he said. And he didn't ask his wife to fill one out, either, after she started there. Some others were missing information or weren't dated within three days of a new employee's hire.

After begging for months to speak directly with his auditor, Weir said he gave up and begrudgingly paid the \$7,500 fine in August to avoid ending up fighting ICE in court.

<http://www.chron.com/news/houston-texas/article/ICE-delivers-hefty-fines-for-paperwork-errors-3342011.php>