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Feds Target Illegal Hires

By Miriam Jordan

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The federal government is requiring as many as 1,000 companies to turn over their employment records for inspection, part of an expanding crackdown on businesses suspected of hiring illegal immigrants, according to people close to the Department of Homeland Security.

The audits, which the government is expected to make public in the next few days, represent the biggest such operation since 2009. At that time, Immigration and Customs Enforcement, a DHS unit, conducted an auditing sweep of businesses working in public safety and national security.

ICE last month established an employment compliance inspection center to beef up coordination across states instead of having agents follow only local leads. The latest round of audits targets at least a few regional fast-food chains, according to people with knowledge of the operation.

Federal agents are expected to visit the companies in coming days to notify them of the requirement. The required documents include I-9 forms, used to verify an employee's identity and eligibility for employment in the U.S.

ICE declined to comment. The U.S. Chamber of Commerce didn't respond to a request for comment.

The big new sweep comes as state and federal lawmakers who champion tough immigration enforcement are pushing to mandate that all U.S. companies use a government-run electronic database to verify whether their new hires are legal workers. Currently, only federal contractors are required by law to use the program, called E-Verify.

The enforcement approach allows both Democrats and Republicans to argue that they're tackling illegal immigration even in the absence of major new legislation on the issue. Both sides can tout enforcement as an effort to protect American workers from illegal immigrants, perceived as creating unfair competition for scarce jobs.

That helps explain the push to expand the database system, which can weed out undocumented workers, and a recent surge of immigration enforcement by the Obama administration, which is stepping up its use of "silent raids," or audits of employee records that can lead businesses to dismiss hundreds of workers.

ICE isn't expected to name the companies it is auditing but may identify the sectors in which they operate. Historically, agriculture and the food-processing and hospitality industries are the most vulnerable to enforcement actions, because they rely heavily on low-skilled workers.

Audits last year ensnared the fast-growing burrito chain Chipotle Mexican Grill Inc., which in recent months was forced to dismiss hundreds of illegal workers in Minnesota. An ongoing investigation of 60 Chipotle restaurants in Virginia and Washington, D.C., will likely force the company to shed more workers, according to immigration authorities.

Thousands of workers have been caught in the net by the Obama administration. Among other companies hit by the program are Abercrombie & Fitch Co., hip-clothing maker American Apparel Inc. and Gebbers Farms, a big apple grower in Washington state.

Experts say the audits are more effective than the work-site sweeps of the Bush era because they make employers let go of every suspected illegal immigrant on the books, not only those present when a raid occurs. Companies are highly unlikely to hire replacements who are illegal immigrants.

"These developments show that it's not wise to turn a blind eye" to unauthorized workers, said Ms. Myers Wood, who currently advises businesses on immigration issues.

The Service Employees International Union, about 25% of whose members are immigrants, opposes the raids. "Silent raids are not helping keep good people employed, and they are not helping the economy," said Ben Monterroso, a senior staffer with the SEIU, the country's largest union, with 2.2 million members in health care, janitorial services and government. The union, which grew its ranks in California and other states by attracting immigrants, regardless of their status, favors an amnesty program for illegal workers, Mr. Monterroso said. The SEIU is advising Chipotle's laid-off workers in Minnesota to help them assert their rights and ensure they are properly compensated.

The AFL-CIO said its position hadn't changed since April 2009, when it, the SEIU and other big unions forged a common position supporting legalization of immigrants,

coupled with a more efficient worker system to make sure new workers were legal. The AFL-CIO doesn't support E-Verify without legalization, a spokeswoman said. It is opposed to the I-9 audits and maintains that enforcement doesn't work without a comprehensive solution to the problem.

"We are in favor of comprehensive immigration reform, and we see that legalization is actually the strongest possible worker protection," said a spokeswoman for the AFL-CIO, an umbrella organization for 57 unions representing 12.3 million workers.

E-Verify grew out of a pilot program introduced in 1997 in six states with large illegal-immigrant populations. In 2003, Congress extended the pilot to all 50 states. But it was adopted by fewer than 6,000 employers until about 2005, when the Bush administration began promoting it, among other measures, to tighten immigration enforcement.

Today, the free Web-based program allows businesses to check information provided by new hires on an I-9 form against Social Security Administration, State Department and Homeland Security databases. Federal contractors must use it; three states require all employers operating within their boundaries to use it. In addition, about a dozen other states require its use by government agencies and public contractors.

Though E-Verify's use has grown in recent years, only about 11% of 7.7 million employers nationwide use the program, either voluntarily or as a condition for doing business with the government. In recent weeks, Republican promoters of E-Verify have begun pushing for an expansion of the program in Congress and in several states.

"With 26 million Americans unemployed or underemployed, expanding E-Verify would help open up jobs that they need," Rep. Lamar Smith (R., Texas) said last week at the first hearing of the immigration subcommittee of the House Judiciary committee. His view was echoed by Rep. Elton Gallegly (R., Calif.), who chairs the subcommittee and is also a key proponent of mandatory use.

Tennessee, Florida and Georgia are among several states where lawmakers are seeking to mandate E-Verify use for all employers among other measures to combat illegal immigration.

Any expansion of the program would require changing federal law and would likely face opposition. After Arizona made E-Verify mandatory for all companies operating in the state in 2008, the U.S. Chamber of Commerce joined civil-liberties groups to challenge it in the U.S. Supreme Court. The Court is expected to rule in coming months on whether a state can require employers to participate in a program that

federal law currently specifies is voluntary. The ruling is expected to influence the states where lawmakers have proposed making E-Verify mandatory.

At the House Judiciary Committee meeting last week, Zoe Lofgren, (D., Calif.), a ranking member of the immigration subcommittee, said mandatory E-Verify use would "encourage businesses and workers to enter the underground economy by working off the books." She said it would "decimate" the agriculture sector, where illegal workers fill 75% of the jobs.

At Stanley Farms, a 1,000-acre onion grower in Georgia, workers are overwhelmingly Hispanic immigrants, who co-owner Brian Stanley says he assumes are legal workers unless he is told otherwise. The closely held grower has tested equipment to replace manual labor during the April-to-June harvest, with little success. Vidalia onions, which tend to be softer than other onions, are easily bruised, says co-owner Brian Stanley.

"There's nothing out there to replace hand labor, and we don't have American people applying for these jobs," said Brian Stanley, a third-generation onion farmer.

"Using E-Verify would cut our work force and hurt our business," he says.

Publicly traded companies in the fast-food and hospitality sectors haven't rushed to the program, either. A spokesman for Wendy's, a unit of Wendy's/Arby's Group Inc., said company-operated restaurants use E-Verify only in the states where it is required. Chipotle, which owns and operates all its nearly 1,100 outlets, also participates solely in states where it is mandated.

An evaluation of the program carried out for the government last year by research group Westat found that it might be failing to detect one out of two illegal workers, specifically those who obtained employment by borrowing or stealing someone else's identity. A government spokesman said it is working to improve the program's ability to detect identity fraud.

"In states where E-Verify is mandatory, there are still illegal workers," said Mr. Cerda, the immigration attorney. He argues that E-Verify must be linked to a biometric identity system to be effective.

No matter the flaws, however, employers should join, experts say.

"E-Verify is a no-brainer for employers," said Mark Reed, a former immigration agent who runs Border Management Strategies, a consulting firm. "For employers attempting to build immigration compliance, it's a fundamental component. For

employers who continue to hire illegals, it provides some protection against adverse government action."