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Immigration enforcement turns to firms

By Maria Sacchetti

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Federal immigration officials are increasingly imposing thousands of dollars in fines on New England companies — from Fenway Park snack vendors to a Maine blueberry grower — for failing to prove that all their employees are in the United States legally.

The fines rose from just \$14,534 in fiscal year 2008 to \$118,000 this year in New England alone.

Those penalties are the result of a major shift last year in the Obama administration's immigration strategy. Instead of the dramatic, large-scale raids that snagged hundreds of illegal immigrants, including at a New Bedford factory three years ago, federal officials say they are focusing more on the businesses that hire them. The aim is to eliminate the job opportunities that attract illegal workers.

“We’re hoping that it sends a strong message within certain industries. Hopefully the word gets out that you’ve got to play on a fair playing field,” said Bruce Foucart, head of investigations for US Immigration and Customs Enforcement, or ICE, in New England, which carried out investigations and imposed the fines. “By hiring people illegally and not paying the proper wages and benefits . . . it just isn’t fair. It negatively affects everyone, including the employees.”

Federal records show the effect of the new policy. Arrests of individuals are sharply down, from more than 6,000 two years ago to 1,664 last fiscal year, the most recent year for which figures are available. Meanwhile, ICE arrested a “record-breaking” 187 employers for violating the law last year.

Critics say the new policy has little impact on illegal immigrants.

“They get off with, at most, a slap on the wrists,” said Ira Mehlman, spokesman for the Federation for American Immigration Reform, a Washington-based organization that favors tougher restrictions on immigration. “ICE does nothing to apprehend the illegal workers. They go down and get a new set of documents from the street corner and they get a new job. It becomes a game of musical chairs.”

Federal immigration officials audited more than 2,000 companies nationwide last fiscal year, examining the federal I-9 forms that companies must maintain for employees certifying that they are all eligible to legally work in the United States. Nationwide, federal officials fined noncompliant companies \$6.95 million last fiscal year, 10 times the amount two years before.

In New England, the quiet raids have upset many businesses. But they acknowledge they are paying closer attention to their employees' paperwork.

Some said they signed up for E-Verify, a federal system, voluntary in most states, that lets employers check the legal status of their workers. Others scrutinized their workers more closely, and many had to fire at least a few.

Drusilla Ray, president of Cherry Point Products, Inc., a 70-employee seafood processing plant in Milbridge, Maine, said she fired two workers from Honduras who did not have proper paperwork and paid a \$2,475 fine last fiscal year. Next time, she said, "I probably would check a little more thoroughly."

Jeff Ferreira, foreman at F&B Rubberized Inc. in New Bedford, said the company fired about 18 immigrant workers and paid a nearly \$10,000 fine in fiscal year 2009. Then, he said, a lawyer encouraged the workers to sue the company because it had failed to pay overtime, a violation of state law. They settled for \$300,000.

Now, he said, the company has legal workers. But he noticed that his former workers simply found jobs someplace else.

"They work in companies all over New Bedford," he said.

The fines frustrated businesses that said they wished Congress and the president would find a solution to illegal immigration so that they could avoid fines and other trouble.

Jasper Wyman & Son in Maine, a leading US blueberry grower, was fined \$118,000 this year for violations that range from paperwork errors to the possibility that more than 200 of its 1,200 person workforce over two years was in the country illegally.

Edward R. Flanagan, president and CEO, said he never knew that the workers lacked proper documentation. He said the company does not exploit workers, paying as much as \$20 an hour and offering free food and housing. But he also said that, in light of ICE's tough stance toward employers, last summer he hired a fully legal workforce using E-Verify.

Still, he worried about filling seasonal jobs raking blueberries.

"It's true from California to Maine: Farm businesses cannot get workers, and we need [agricultural] jobs," said Flanagan, chairman of the American Frozen Food Institute, who has lobbied to pass an agricultural jobs bill. "Meanwhile, we are stuck in neutral. It's a terribly polar subject, and business is caught in the middle."

The current crackdown on employers who hire illegal immigrants stems from a 1986 federal law, the Immigration Reform and Control Act. The bipartisan law granted legal residency to nearly 2.7 million illegal immigrants while for the first time making it illegal for an employer to knowingly hire unauthorized workers.

The law led to the creation of the I-9 form, but its rules were so broad that it became easy for workers with fake documents to subvert the rules. So instead of meeting its goal to prevent illegal immigration, the numbers soared to an estimated 11 million last year, according to estimates from the Pew Hispanic Center.

Now the outcome of that 1986 law is often raised in the current debate over illegal immigration. Advocates for immigrants say illegal workers should have a chance to apply for legal residency, but critics fear illegal immigration will be allowed to soar again because of lack of enforcement.

The Obama administration has tried to strike a balance by strengthening enforcement of immigration laws while also favoring a path to legal residency for illegal immigrants.

Muzaffar Chishti of the Migration Policy Institute, a think tank based in Washington, said three pieces must be in place to solve the problem: Illegal workers should be here legally to reduce their incentive to get false documents, the government should carry out effective enforcement, and businesses should have access to the workers they need, more in expansive times, and fewer during a recession.

Otherwise, he said, the fake document industry will continue to thrive and sabotage the system.

“That’s the real challenge here,” said Chishti, who runs the institute’s office at the New York University School of Law. “Unless you get all these three things working together, we won’t have anywhere close to a good, functioning system.”