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## **Policing Illegal Hires Puts Some Employers in a Bind**

**By Miriam Jordan**

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Even as the Obama administration cracks down on companies that hire illegal immigrants, it is simultaneously going after employers that it says go too far in vetting job applicants to ensure they are entitled to work in the U.S.

The Department of Homeland Security currently is auditing employment records of many companies suspected of hiring undocumented workers. Yet in an emerging paradox for businesses, the Justice Department and other agencies have stepped up probes of employers—including restaurant groups, factories and retailers—for allegedly violating anti-discrimination laws by demanding too many identity documents from applicants who aren't U.S. citizens.

To fend off lawsuits or enforcement actions, several companies have recently reached out-of-court settlements with the government; in some instances they paid fines.

"The message is: Employers beware. You need to worry just as much about asking for too many immigration documents as you do about not asking for enough," said Stephen Yale-Loehr, an immigration-law scholar at Cornell University.

The current tension arose from provisions in the federal Immigration Reform and Control Act of 1986 and the Immigration and Nationality Act. The IRCA prohibits employers from knowingly or intentionally hiring illegal immigrants; companies must verify a person's work eligibility through the "I-9" form process, in which new hires present identity documents and employers examine them for authenticity.

Anti-discrimination protections in the INA, meanwhile, guarantee "all individuals authorized to work in the U.S. have the right to seek employment without the added burden of special rules or document demands based on their citizenship status or national origin," said Thomas E. Perez, assistant attorney general for civil rights. He said his unit is prioritizing enforcement of the INA provisions.

"The monkey is on the back of employers to make the call," said Mary Pivec, a Washington, D.C., attorney who is defending several companies with immigration-related problems. "We have more enforcement paired with insufficient and inconsistent guidance. Companies are in the crossfire."

By the end of 2010, the Justice Department will have boosted by 25% the total number of attorneys and investigators in its Office of Special Counsel for Immigration-related Unfair Employment Practices. The department doesn't disclose how many companies it is investigating, but a spokesperson didn't deny claims by immigration attorneys that there has been a surge in cases.

"The Obama administration has been much more active in enforcing the immigration law's anti-discrimination provisions than the Bush administration," Mr. Yale-Loehr said.

Companies face a maximum \$1,100 civil monetary penalty for each individual from whom they demanded too many documents to prove work eligibility.

"It's a Catch-22," said Randy Johnson, senior vice president for labor and immigration at the U.S. Chamber of Commerce, the big business trade group. "Innocent employers get caught up in this snare of enforcement."

Businesses also face a proliferation of state laws designed to punish employers that hire undocumented immigrants. The U.S. Supreme Court is to consider this fall whether Arizona had the right to enact a 2007 law that empowers the state to revoke the business license of any employer found to knowingly hire illegal workers. The court is to determine whether federal immigration law preempts the state's statute.

On July 8, the Justice Department sued Garland Sales Inc., a rug manufacturer in Dalton, Ga., alleging it "engaged in a pattern of bias by imposing unnecessary and discriminatory hurdles" to employment for foreigners who were authorized to work in the U.S, according to a statement by the agency.

The government alleges that Garland required all non-U.S. citizens applying for jobs to present additional documents, in violation of the law. The Justice Department also said Garland "retaliated" against a naturalized U.S. citizen who has limited English skills by rescinding his job offer after he failed to produce a green card, which proves lawful U.S. residency for non-citizens. The person had presented a Social Security card and driver's license.

The company, which employs 300 people, denied the accusations and said it will defend itself.

"Garland Sales does not discriminate against individuals because of race, color, religion, sex or national origin in its hiring process and categorically denies the allegations," the rug maker said in a news release.

In late June, the Justice Department announced it had reached an agreement with Morton's Restaurant Group Inc. to settle allegations that an outlet in Portland, Ore., had required two noncitizens authorized to work in the U.S. to present more documents than legally required to establish their work eligibility. Both were fired after working for a time while the company reviewed their documentation.

"Morton's fired the workers after it rejected their valid Social Security cards and demanded to see additional documentation establishing their work authorization. In contrast, Morton's routinely permitted U.S. citizens to present their Social Security cards for this purpose," according to a Justice Department statement.

Under terms of the out-of-court settlement, Morton's agreed to provide full back pay of \$2,880 and \$5,715.62 to the employees, pay a \$2,200 civil penalty and train Morton's employees in Portland on federal protections for workers against citizenship-status and national-origin discrimination. Morton's also agreed to properly train employees nationwide who have any role in evaluating someone's work eligibility.

Roger Drake, communications chief for Morton's, declined to comment on the case.