

Immigration Laws And The I-9 Trip Up Manufacturers

Manuel Valdes, Associated Press

SEATTLE (AP) — They cost clothing chain Abercrombie & Fitch \$1 million in fines, tripped up Meg Whitman's campaign for California governor, prompted mass layoffs across the country and have been at the center of countless other workplace immigration disputes.

An obscure federal document called the I-9 form has emerged as a contentious element in the national immigration debate since the Obama administration vowed to go after employers who hire undocumented workers. Employers must fill out and sign the form, which requires them to acknowledge, under penalty of perjury, that they examined documents that allow an employee to work.

The Obama administration a year ago announced plans to ramp up I-9 audits — a shift from the notorious work site raids common under the Bush administration.

But most employers with questionable record-keeping aren't being punished for failing to prove their employees have legal status, an analysis of documents obtained by The Associated Press show.

Most receive only warnings if the I-9s turn out to be based on fraudulent documents. Some are fined. Few face arrest. And the AP analysis also shows that many of the employers the government has targeted had no violations.

"The I-9 system is deeply flawed," said Daniel Costas, an immigration policy analyst at Economic Policy Institute, a Washington, D.C., think tank. It "relies on employer eyesight for the verification of government identification and documents ... If this is how the system is going to work, then it's a big waste of time and money."

The system is meant to thwart illegal immigrants from working in the U.S., where about 7.8 million illegal immigrants have jobs, according to a 2009 report by the Pew Hispanic Center.

But at its foundation is a law that requires a promise that employers check their workers' eligibility to work. Those forms are never submitted to the government. Employers must simply keep them on hand in case the government decides to audit the business and do a check of its workers' immigration status. All employers are required to keep the forms — no matter the size of the business.

Whitman, the Republican hoping to become California governor Tuesday, has struggled to overcome a scandal over her forced revelation that she had an illegal immigrant housekeeper for nine years. The maid was required to fill out an I-9 form when she was hired, and Whitman says she fired her last year when she learned the

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woman had lied on the form.

During an audit, ICE agents go through the I-9 forms and check Social Security Numbers to make sure they're real, matching them against copies of other forms of ID.

Early this year, the AP asked for each of the audits conducted since the changes to the system were made. The U.S Department of Immigration and Customs Enforcement responded just recently with limited details of a sampling of audits covering a seven-month period.

The AP reviewed summaries of 430 audits conducted between July 1, 2009, and January 31, 2010.

During the seven-month period, ICE agents found 22,000 "suspect" documents among the more than 86,000 I-9s reviewed. Suspect documents mean the person's legal authorization to work in the U.S. is questionable.

ICE audited more than 200 companies with fewer than 25 employees, including 50 businesses agents listed as having fewer than five workers. More than 250 of the companies didn't have a single suspect form.

Administrative arrests, usually arrests of immigrants without the proper documentation, dropped from nearly 5,200 in the fiscal year 2008 to 765 through August in fiscal year 2010. Criminal arrests of employers rose slightly, from 135 in 2008 to 150 so far in that same time period. Criminal arrests of workers dropped from 968 to 208.

ICE officials say their I-9 audit efforts are part of a comprehensive strategy.

"We're trying to create a culture of compliance," said Brett Dreyer, the current head of ICE's work site enforcement unit. "We're using the best tool available. We believe in this work site mission as part of the entire strategy."

Dreyer said that in the mid-1990s, immigration agents would target industries known to have a significant number of illegal immigrants. Now, ICE prefers to follow investigative leads to better use their resources, he said.

But without large fines and arrests, it's hard to tell how much effect the audits are having, said Julie Myers, a former Assistant Secretary at ICE during the Bush administration.

ICE reported that it has collected more than \$6.9 million in fines this year, up from \$1.33 million in 2009. But some of those fines come from cases initiated in previous years, including the \$1 million from Abercrombie & Fitch.

More than 200 companies were fined in fiscal year 2010 — some fines were as low as a few hundred dollars. There were also examples of harsher fines. Abercrombie & Fitch will pay more than \$1 million for failing to verify the employment eligibility of

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its workers in stores in Michigan, authorities announced in September, after the company agreed to have the case made public.

But most cases go unnoticed. The U.S. Supreme Court has ruled that the federal government can't release the names of the companies that have been fined, unless the companies agree.

The audits don't go unnoticed by the workers.

In September 2009, American Apparel said it laid off 1,600 workers with suspect immigration documents after the company was audited.

Peter Schey, spokesman and attorney for American Apparel, said the audits result in workers being pushed further underground. He said most workers don't leave the United States — life here is still better than in their home countries.

Schey, along with other immigrant-rights advocates, want to see ICE conduct the audits in collaboration with the Department of Labor to hone in on employers that are violating labor laws.

"If they're hitting the right people, why would they have 250 companies in total compliance? Why would they only have arrested 135 criminal employers? They have their targets on the wrong employers," Schey said.

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