

Immigration Audits Loom for Small Businesses

Industries known to hire foreign workers will be targeted

By NOELLE PHILLIPS, THE STATE

State officials expect the number of companies cited for violating the state's immigration laws will rise when audits of small businesses begin in July.

Those audits will focus on businesses that traditionally hire foreign workers, meaning landscapers, hotels, restaurants, golf courses and construction companies will be first to get inspected.

The state has been auditing larger employers since last summer, and so far the compliance rate has been high, said Jim Knight, spokesman for the S.C. Department of Labor, Licensing and Regulation, the agency conducting the audits.

"On July 1, 2010, ask me if my compliance rate is going to be as high as 94 percent," Knight said. "No, it's not."

The audits are the key piece of the S.C. Immigration Reform Act, which was passed by the Legislature in 2008. The goal was to drive illegal immigrants out of South Carolina by enforcing hiring standards on businesses.

While state regulators will focus on industries that are known for hiring foreign workers, it will conduct sample audits of other businesses to make sure everyone complies, Knight said.

The impact will be huge.

When the state began auditing companies with more than 100 employees in July, there were 2,100 businesses in that size range, Knight said.

The agency estimates there are 110,000 companies with fewer than 100 employees, Knight said. There are 10 auditors.

In Richland County, 25,000 people work in the hospitality industry, and most of them are employed by small businesses, said Ric Luber, president of the Midlands Authority for Conventions, Sports and Tourism.

Since audits of private companies began in July, 1,500 companies have been audited, and 89 citations have been issued.

Knight and immigration attorneys predict the number of citations will rise once smaller companies are audited.

"Large employers are more sophisticated. They have human resource people on staff. They have lawyers on staff," Knight said. "They belong to trade associations like the Columbia Chamber that help them figure this stuff out. We're going to be dealing with the truly small employers."

The Greater Columbia Chamber of Commerce hosted a seminar on the law Thursday morning. While only 21 people attended the free event, they had dozens of questions about its impact and how it will apply to them.

"It's an issue you are going to have to deal with," said Ike McLeese, the chamber president. "Whether you like it or not, it's going to happen."

Molly Lowder, human resources manager for IMIC Hotels in Columbia, said she was concerned about how the new law will change the hiring process at its 13 hotels and restaurants in South Carolina.

The law will force the company to keep additional paperwork in case state investigators show up for an audit, Lowder said. And since IMIC is in the hospitality industry - one of the target areas - it's likely they will be audited.

"It sounds like they're going to work with you if you aren't blatantly hiring the wrong people," Lowder said. "All you can do is get as much information as you can and start implementing it."

Companies that break the law can be fined between \$100 and \$1,000 per worker and lose the right to do business in South Carolina.

So far, only one company has risked losing its business license and paid a large fine, Knight said. The Charleston landscaper paid \$11,500 for repeatedly breaking the law.

Most violations have involved minor infractions such as missing the five-day window to verify new workers, accepting a driver's license from an unapproved state or accepting a U.S. passport, he said.

In every citation, a company is given a chance to correct its mistakes before penalties are assessed.

When state regulators prepare to audit a business, they mail a letter in advance, Knight said. If a company needs more time to prepare, its representatives can call an investigator to talk about it, he said. Often, a company doing business in South Carolina has corporate headquarters in another state and needs extra time to get the correct files delivered, he said.

"We do not have arrest powers," Knight said. "We do not carry guns. We are there to look at documents."

To comply with the law, companies must verify new workers' legal status through two means:

- By participating in the federal government's E-Verify system, which electronically matches names and Social Security numbers
- By requesting a South Carolina driver's license or a license issued by one of 26 other states on a list approved by the state

Companies have to use one of the two methods but not both, said Lee Depret-Bixio, an immigration attorney at Ogletree Deakins.

When a state investigator shows up at a company, the human resources staff can hand over that file, she said.

Depret-Bixio advised employers to keep those verification documents separate from the federal I-9 forms, which they already are required to fill out when hiring new workers.

Those documents must be on file for every worker hired on July 1 or later, she said.

As for employees on the payroll before July 1, company officials will be required to sign a statement saying they do not willingly or knowingly employ illegal immigrants, Knight said.

If a business owner will not sign the statement, then auditors will conduct a random investigation of the legal status of all employees, no matter their ethnicity or length of employment.

"We could get in a lot of trouble if all the names were foreign-sounding to Pelion and Lugoff," Knight said. "We don't just look at Smith and Jones. We don't just look at Hernandez or names that might sound Chinese or otherwise foreign."

Depret-Bixio encouraged employers to figure out how they are going to verify workers' status before July 1. They don't want to get caught off guard, she said.

"You will get audited eventually."