

City Club Questions – Immigration Forums

How do employers prove there aren't any domestic workers available?

Before receiving visas for H-2A, H-1B, H-2B or permanent foreign workers, employers must demonstrate their domestic recruitment efforts are unsuccessful. Employers must demonstrate they made an effort to fill the specific job opportunity with domestic workers – whether by promoting current employees, using private employment agencies or a labor union, recruiting at trade shows, or by advertising on radio or television or in a professional or trade publication, whichever is appropriate and most likely to bring responses from able, willing, qualified and available U.S. workers. These jobs must also be advertised through the state and federal job employment recruitment system for a period of 30 days. If any U.S. domestic workers apply for and are rejected for the job opportunity, the employer must document that the applicants were rejected solely for lawful job-related reasons.

Who is responsible for checking employers?

A number of federal agencies have jurisdiction within the areas of immigration, depending on the issue. For example, the U.S. Dept of Labor's Wage and Hour Division handles federal labor issues. OSHA handles workplace safety and the Bureau of Immigrations and Customs Enforcement, also known as ICE, enforces immigration-based employer laws.

Oftentimes when ICE uncovers worksite violations, they discover additional violations such as alien smuggling, alien harboring, document fraud, money laundering, or worker exploitation. Worksite investigations also target employers who subject unauthorized alien workers to substandard or abusive working conditions and employers who use force, threat or coercion to have employees deported in order to keep unauthorized alien workers from reporting substandard wage or working conditions. The bureau also tries to educate employers about their responsibilities to hire only authorized workers and how to accurately verify employment eligibility.

What kind of sanctions do businesses face for hiring undocumented workers?

According to Immigrations and Customs Enforcement, a first offense carries civil fines from \$275 to \$2,200 for each illegal immigrant hired. Federal officials are also beginning to file criminal charges against company officials. To date, criminal penalties have been as high as \$3,000 and include up to six months in prison for each illegal hiring.

From October 2005 to December 2006, ICE officials reported more than 1,100 criminal arrests including business operators and manufacturers of fake work documents.

In November of 2006, a man was sentenced to 1½ years in prison and ordered to forfeit \$1.5 million for operating a contracting business in Indiana that used mostly illegal immigrants to perform stucco work. The head of a temporary labor business in Ohio was sentenced in April of 2007 to 15 months in prison and ordered to forfeit \$12 million for using hundreds of illegal immigrants.

Some states are also trying to enact their own criminal sanctions for hiring illegal immigrants. Earlier this year a bill in Missouri would set fines of \$10,000 to \$200,000 for three-time violators, while proposed penalties in Montana would be \$300 for each illegal hiring. Similar proposals in South Carolina and Kansas would require companies to verify the worker eligibility and prohibit the awarding of state contracts to businesses that hire illegal immigrants. Colorado passed such a measure more than a year ago. Sources: Immigrations and Customs Enforcement; San Diego Union Tribune.

How do employers determine the legality of documents provided by workers they want to hire?

The Immigration Nationality Act offers perspective employees a choice of what documents to present in order to prove eligibility to work. The law requires employers to verify two forms of identification to establish identity and employment eligibility. Most often, these two items usually consist of a driver's license and a Social Security card. High-quality counterfeit documents are available for sale everywhere but employers who go too far in inspecting documents walk the fine line of being charged with violating laws prohibiting discrimination based on national origin.

Employers can verify Social Security numbers by calling toll-free (800) 772-6270 or (800) 772-1213 to check five employees or fewer. Employers needing to verify Social Security numbers for more workers can use the informational hotline Employee Verification Service at (410) 965-7140, which is administered by U.S. Citizenship and Immigration Services. This free Internet-based system is available in all 50 states to verify newly hired employees. Once employers are registered, they are directed to an automated link with the Social Security Administration database and immigration records.

Verification can take several days and employees can reconcile any incorrect data. If discrepancies are not addressed within eight days, the employer is notified that the employee is unauthorized to work. The employer then must either terminate the employee or become subject to sanctions for knowingly employing an illegal alien unless they can prove government error. Critics charge the system is cumbersome, has a high rate of error and cannot tell the employer whether the name and the Social Security number actually belong to that applicant sitting in front of them. They also claim employers misuse the system to discriminate or retaliate against employees. For more information, visit <https://www.vis-dhs.com/EmployerRegistration>.

What is the scope and extent of the “national origin/ethnicity” problem – both with employers who refuse to hire workers where employers falsely believe their work status is questionable or by employers who take advantage of employees they know are here illegally?

The Equal Employment Opportunity Commission does not keep statistics on these situations, however nationwide ethnicity accounts for about 11 percent of all the 75,000 - 80,000 complaints received by the commission each year.

What happens to the money the Equal Employment Opportunity Commission recovers in suits against companies? Does it fund the commission or go toward restitution?

Any money recovered through settlement or court verdicts goes to the victims. Funds used to administer the agency come from Congress.

Where do employers who belong to industry or employment associations or who serve as employment agents get their workers?

Some are hired based on first-person referrals from friends, family members and other relatives. Many U.S. employers rely on private agencies to find and recruit guest workers in their home countries, mostly in Mexico and Central America.

What is the current “prevailing wage” for farm workers?

Prevailing wages are based on the function a farm worker performs. In Idaho, prevailing hourly wages for agricultural work range from a high of \$14 per hour for a crew leader to \$6 per hour for general farm labor. Piece rate wages range from moving irrigation lines at 17 cents per four-inch hand line to shearing rams at \$3.708 a head. Piece rate wages must be supplemented if a worker earns less than the prevailing hourly rate for the specific category of work. A list of the prevailing wages established for Idaho agricultural workers can be found by selecting Idaho at <http://www.foreignlaborcert.doleta.gov/aowl.cfm>.

What protections are available to foreign workers who come to the United States under the H-2A program if they separate from the employer because their rights were violated and therefore lose their H-2A status?

Like all employees, if an H-2A worker doesn't receive the appropriate payment, housing or equipment as stipulated in the terms of their employment, they should file a formal complaint with the Idaho Department of Labor and seek all relief available to them.

After reviewing the complaint, the department forwards it to the appropriate federal agency for investigation. Complaints about wages or working conditions can be filed with any of the department's 24 local offices. Wage complaints are forwarded to the state Wage and Hour unit and complaints about workplace safety are sent to the federal Occupational Safety and Health Administration. Complaints from workers threatened or harassed by employer based on the workers' temporary status, national origin or gender are sent to the Idaho Human Rights Commission and the U.S. Equal Employment Opportunity Commission.

What happens when seasonal workers in agricultural jobs under H-2A or nonagricultural jobs under H-2B decide not to go home and essentially disappear in the U.S.? How do we track them?

There is no way to track H-2A and H-2B seasonal workers who remain in the U.S. after their visas expire. Those who do remain in the U.S. are in violation of their work visa and U.S. immigration laws.

What kind of proof does Idaho Commerce & Labor ask for when people apply for unemployment insurance benefits?

People applying for unemployment insurance benefits in Idaho are asked to provide a Social Security number and show their driver's licenses as proof of identification and the department has a system in place that automatically and electronically checks and cross-matches every Social Security number supplied for receiving unemployment insurance benefits with the Social Security Administration.

Individuals applying for benefits online encounter a screen that asks if they are legally authorized to work in the United States. If the answer is "no," the application process ends. If the answer is yes, the individual's identity is validated by cross-checking their personal information with the Division of Motor Vehicles and the Social Security Administration. If identities are not verified, the individuals are given time to correct any errors that might be responsible. If identities still cannot be validated, benefits are denied

Regarding SB 1157, which requires verification of legal presence in the United States to obtain public benefits, what measures or "cross matches" exist for other state agencies and public benefit programs such as emergency medical care and public safety?

Eligibility verification is mandatory for federal, state and local public benefit programs. The Systematic Alien Verification for Entitlements program, or SAVE, is an intergovernmental information-sharing initiative used by state and local government agencies that administer federal public benefit programs to verify that a non-citizen applicant is legally in the United States and therefore eligible for public benefits and licenses. The cost varies from 20 cents to 48 cents, depending on the level of query and access method. For more information, visit <https://www.vis-dhs.com/agencyregistration>

Are illegal immigrants coming to the U.S. from places other than Mexico?

Yes. According to a March 2006 study by Jeffrey Passel at the Pew Hispanic Center, 56 percent of all unauthorized immigrants come from Mexico, 22 percent come from other Latin American countries, and 13 percent from Asia, 6 percent are from Europe and Canada and 3 percent from Africa.

What happened to the Bracero program?

The Bracero program started in 1942 as an informal arrangement between the United States and Mexico and was formalized in Public Law 78 in 1951. Over the 22 years the program operated, almost 5 million Mexican workers, about 445,000 annually, were admitted to the United States. They were allowed to work as seasonal contract laborers, returning to Mexico and coming back to the U.S. for the next growing season.

In the spring of 1946, Mexico removed Idaho from the list of approved states utilizing the program, citing its poor treatment of Mexicans. The Idaho Legislature had created rules forcing braceros to stay on the job or face arrest and deportation – and forced unpaid labor while awaiting trial. (Source: <http://www.latinamericanstudies.org/immigration/bracero-timeline.htm>)

In 1954, the Immigration and Naturalization Service preceded a controversial crackdown on illegal immigration by working with growers to increase bracero admissions. After the 1954 crackdown and an increase in bracero admissions, illegal entry – as measured by apprehensions at the border – fell 95 percent between 1953 and 1959.

The bracero program had its flaws including evidence that some employers treated workers poorly and that a large number of bracero workers never received their wages.

The program came to an end in 1964.

Assuming illegal workers do not pay taxes, what “constitutional” right do these workers have to tax-based public services?

Illegal workers do pay taxes. Employers are required to withhold all state, federal and local taxes required by law, and like people who are in Idaho legally, illegal workers pay all the appropriate sales and use taxes whenever they purchase items such as gas, clothing and food.

Do you know or can you estimate what portion of federal Medicaid funds in Idaho is spent on health care for illegal immigrants?

Medicaid is a federal-state program that provides health care and health-related services to low-income individuals. Illegal immigrants are ineligible for Medicaid benefits.

Medicaid enrollees – both new applicants and recipients - must prove citizenship by providing proof of citizenship. Passports top the list of preferred documents, followed by a birth certificate and driver's license or similar photo identification. States have the option of electronically matching documents with applicants such as checking the computerized birth certificate database in lieu of obtaining the certificate.

States also have the option of being more restrictive than the federal government, by denying Medicaid coverage to long-standing legal immigrants. According to the National Conference of State Legislatures, at least 14 new laws were enacted in 11 states in 2006 restricting or expanding immigrants' eligibility for public education, health care or other public benefits. This trend continued in 2007 with bills introduced in at least nine states to restrict immigrant access to public benefits. Virginia alone has considered dozens of immigration measures this year including one that could force charities and other groups receiving state and local funding to verify that a client is in the country legally before providing services.

Health care advocates worry that millions of low-income American citizens could be forced to delay needed care or even lose Medicaid coverage because of the time, expense and difficulty of obtaining acceptable documentation. A February 2007 report by the Center on Budget and Policy Priorities highlights problems in 11 states including unexpected enrollment declines, backlogs in processing applications and significant administrative costs.

Do we know how many children are born in Idaho to undocumented workers each year?

No. The state does not track the number of children born to undocumented workers.

However, the state does track how many children are born to women who themselves were born in foreign countries. This information provides an accurate snapshot of the origin of Idaho's birth mothers, but it should not be used as an indication of legal status.

In 2005, 22,526 children were born in Idaho. Eighty-seven percent of those children were born to birth mothers who were born in the United States. Thirteen percent, about 2,860, were born to birth mothers, who themselves were born in 148 different countries. Fewer than 50 births each were attributed to the vast majority of these countries. Only four countries accounted for more than 50 births each:

- Mexico: 1,802 births*
- Germany: 109 births*
- Philippines: 71 births*
- India: 61 births*

Are children born in the United States to illegal immigrants given American citizenship?

Yes. The Fourteenth Amendment to the United States Constitution, ratified after the American Civil War, states, “All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside.”

