

Erickson Column: Government turns up the heat on employers

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U.S. employers who knowingly hire unauthorized workers will now face harsher scrutiny and penalties. The Department of Homeland Security (DHS), the government agency that oversees immigration in the U.S., has just announced its intentions to up the pressure on U.S. businesses hiring unauthorized workers.

Janet Napolitano, the current Secretary of DHS and the former governor of Arizona, made it clear in an announcement on April 30 that DHS will focus on the employers who cultivate illegal workplaces by breaking the country's laws and knowingly hiring illegal workers. In essence, the policy will focus the attention of DHS on employers, rather than primarily on the unauthorized worker. In recent weeks, Napolitano has delayed a series of proposed immigration raids in an attempt to focus more on U.S. employers and less on unauthorized workers.

The DHS policy is aimed at striking at a serious cause of illegal immigration — employers who illegally hire unauthorized workers. The strategy behind the policy is to make it perfectly clear to employers that they can no longer hire someone who isn't authorized for employment. The expectation is that there will be less motivation for individuals to illegally enter the U.S.

While the government will continue to arrest unauthorized workers found in the course of their investigations, the focus of these investigations will also now be on the employers who allow the employment to occur.

In my column of April 8, I noted the recent increase in worksite raids. The policy by the Obama administration refocuses the scope and direction of immigration raids to specifically target the employer. Under the Bush administration, immigration raids led to the arrest and deportation of thousands of unauthorized workers, but only the prosecution of a few employers. For example, in 2008 there were over 6,000 arrests as a result of worksite raids, yet only 135 criminal charges were filed against employers. The new policy of DHS now directs Immigration and Customs Enforcement (ICE) to conduct careful criminal investigations of the employers who are employing the unauthorized workers.

The policy being implemented by DHS should come as no surprise given that just hours after being sworn in, Napolitano stated “You have to deal with illegal immigration from the demand side as well as the supply side.” DHS is now looking to minimize the supply by vigorously prosecuting employers who are creating the demand for unauthorized workers.

Napolitano provided specifics on the DHS strategy during an interview with The Associated Press last month. During the interview Napolitano explained that cases against employers will be built by auditing the documents that employees fill out when they join a company, having undocumented workers go undercover and from talking to people who regularly interact with the employers. “What I want to do is deter more employers from intentionally and knowingly hiring illegal workers,” Napolitano said.

Even in situations where a criminal case cannot be established against an employer, DHS has instructed agents to seek civil penalties, including fines and disbarment from federal contracts. The guidelines require that a 14-day notice be issued from the ICE field agents to ICE headquarters, prior to a raid, with information regarding the investigation. The guidelines also require that field agents either have an arrest, indictment, search warrant or at least a commitment from a U.S. Attorney’s Office to prosecute an employer before arresting employees for civil violations at a work site.

The shift away from the previous policy should be seen as the Obama administration’s focus on addressing the underlying cause of illegal employment in our country — employers that allow it to happen. Because the employer is seen as assisting in the ebb and flow of illegal immigration, the first priority listed in the new DHS guidelines is to file criminal charges against employers who knowingly and intentionally hire undocumented workers. This should get the attention of every employer who knowingly makes the decision to hire those without work authorization. As the focus of the government shifts from employee to employer, it is imperative that employers also shift their focus — from cheap unauthorized labor to lawful labor.

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