

Homeland Security and
National Defense Newsletter

**THE ICE-MAN COMETH: CRACKDOWN
OF IMMIGRATION IN THE MEAT
PROCESSING INDUSTRY**

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Immigrations and Customs Enforcement (ICE) has recently enhanced its efforts to prosecute the unlawful employment of aliens through criminal investigations, prosecutions and asset seizures. This new strategy is aimed at deterring employers from hiring illegal aliens, promoting national security, and ensuring fair labor standards. In 2006 alone, ICE issued 3,667 administrative arrests and 718 criminal arrests to illegal aliens during worksite enforcement investigations.¹ In the criminal arena, ICE pursues charges of knowingly hiring illegal aliens, as well as harboring illegal aliens and money laundering.

In recent years, ICE has placed a particular focus on investigations in the meat processing industry, as this industry traditionally employs a high number of Hispanic workers. In 2003, Tyson Foods, the world's largest meat company, was acquitted of federal charges that it conspired to hire illegal immigrant workers. The company is also defending a civil lawsuit by former and current employees who allege that Tyson depressed wages by hiring illegal immigrants. This lawsuit is scheduled to go to trial in March 2008.²

More recently, on Dec. 12, 2006, more than 1,297 illegal aliens were arrested at Swift meat processing facilities in six states during an enforcement operation that was the result of an investigation of work-related identity theft. A review of the company's employment eligibility forms, also referred to as I-9 Forms, at Swift facilities nationwide revealed that 30 percent were suspected as being fraudulent. The company has not yet been charged with any wrongdoing, but the raids

had a serious economic impact on the company.³ Swift was forced to temporarily cease operations at the plants following the raids.⁴ Ironically, Swift was fined \$2.5 million by the Department of Justice in 2002 for "overzealous" documentation verification procedures.⁵ Companies thus have to walk the fine line between complying with both immigration and discrimination labor laws.

In September 2006, federal agents found and deported more than 125 illegal immigrants working at Crider Poultry in Stillmore, Ga., and living in the surrounding area, according to news accounts. The agents went door-to-door looking for illegal immigrants.⁶ And, earlier this year, federal agents arrested 21 workers on immigration charges at Smithfield Foods Inc., the world's largest slaughterhouse. About 10 percent of the plant's 5,000 employees were identified as having unverifiable Social Security identification documents. The day after the raids, the workforce was substantially diminished as many workers stayed away.⁷

It perhaps goes without saying that companies should be careful to comply with the immigration laws. At a minimum, the employer should observe a routine process when receiving a potential employee's I-9 Employment Eligibility Verification Form. Eileen Scofield, of Alston & Bird LLP, has constructed the following checklist:

1. The employee must complete, sign and date Part One of the Employment Eligibility Verification (Form I-9) and tender qualifying identification and verification

³ See

www.ice.gov/pi/news/factsheets/worksite_operations.htm.

⁴ See ID Thieves Targeted in Immigration Raids, ASSOCIATED PRESS, Dec. 12, 2006.

⁵ See

www.usdoj.gov/opa/pr/2002/November/02_crt_630.htm.

⁶ See Mary Lou Pickel, Homeless, Felons Fill Poultry Jobs; Immigration Raids Slash Number of Workers At Plant in Stillmore, THE ATLANTA JOURNAL-CONSTITUTION, Nov. 26, 2006.

⁷ See Jennifer Plotnick, Immigration Officials to Deport Illegals Arrested in Smithfield Raid, THE FAYETTE OBSERVER, Jan. 26, 2007.

¹ See www.ice.gov/pi/news/factsheets/worksite.htm.

² See Bill Poovey, Tyson Foods Illegal Hiring Lawsuit Set for March 2008 Trial, THE ASSOCIATED PRESS STATE AND LOCAL WIRE, Jan. 9, 2007.

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- documents to the employer. These documents must be tendered either at the time the application for employment is made or at the time of hire. Employees must complete part one of the Form I-9 before beginning work.
2. The employer, through its agents, must examine the employee's documents, accurately record identification numbers and expiration dates, and sign and date the Part Two employer attestation provision of the Form I-9. The employer must complete Part Two of the Form I-9 within three business days of the date when an employee actually begins to provide services or labor for a wage or other remuneration. The employee's start date must be included on Part Two.
 3. Generally, the I-9 verification process is completed with steps one and two, completion of the Part One and Part Two. If though a situation arises where the employer believes that an employee is authorized to work in the United States, but the employer is not familiar with the document, the legal standard is "does the document appear to be validly issued?" Also, the document must relate to the person presenting the document (does the photo or description look like the person?). What would a reasonable person think regarding the validity of the document or the relationship to the person presenting the document? Sometimes an employer may request verification or confirmation of the form of the document from the issuing agency. This verification procedure should be applied only to those cases, if any, where there is a valid question with regard to the document.
 4. If, at any time, the issuing authority or the USCIS, or other government agency, formally notifies the employer or its agents that an employee is not authorized for employment, the employer should terminate that unauthorized employee immediately.
 5. Once the employee has completed Part One and the employer has completed Part Two of the I-9 form, the original completed I-9 form will be maintained in the I-9 notebook. This notebook will contain the I-9 forms, in alphabetical order, for each and every current employee of the employer hired after Nov. 7, 1986. In addition, the employer must retain an employee's Form I-9 for three years after the date of hire, or one year after the date of termination of the employee, whichever occurs later. Since IRCA does not require employers to copy the documents presented by the employees during the verification procedures, in order to reduce the paperwork required of the administrative office, it is not necessary to make copies of documents presented by the employee for verification, but again, it is essential that all of the necessary information be completed in the appropriate blanks on the Form I-9.
 6. Day laborers, those hired for less than a three-day period, must be verified before beginning to work. The procedure for verifying the employment authorization of day laborers is the same as for other employees, and the employee and employer must be sure to complete the I-9 form prior to commencement of employment.

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THE NEW CHEMICAL FACILITY ANTI-TERRORISM STANDARDS: CASTING A BROAD NET

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Vulnerability Assessments and Site Security Plans; (3) allowed Alternative Security Programs; (4) mandated audits and inspections to determine compliance with regulations; (5) provided for civil