

KNOWING YOUR RIGHTS AND RESPONSIBILITIES REGARDING FOREIGN WORKERS

One of the core purposes of the Federal Immigration laws of the United States is to protect the U.S. Labor market. The Immigration and Nationality Act requires employers to verify the employment eligibility of all of its employees and imposes penalties upon a company that fails to verify the employment or hires workers who do not have legal authority to work in the U.S.

Q What law addresses the employment of foreign workers?

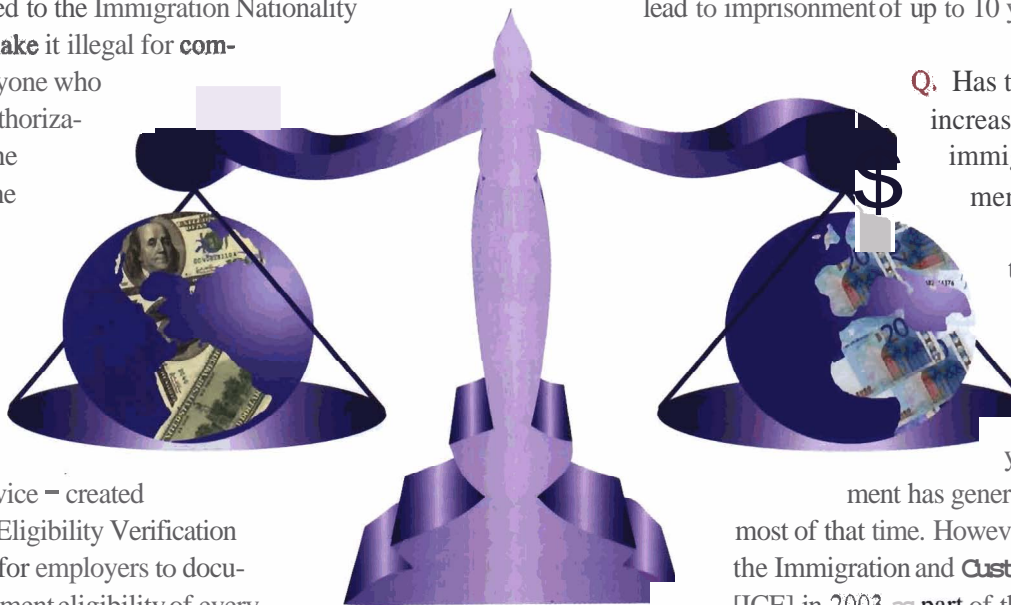
A. The Immigration Reform and Control Act of 1986 (IRCA) was added to the Immigration Nationality Act in 1986 to **make it illegal for companies** to hire anyone who **does not have authorization** to work in the United States. The Immigration and Naturalization Service – the predecessor to the current U.S. Citizenship and Immigration Service – created an Employment Eligibility Verification form (Form I-9) for employers to document the employment eligibility of every employee hired. Before 1986 there was no requirement to verify worker authorization of foreign nationals **or U.S. workers**.

Q What are the penalties for not verifying work authorization?

A. A company must complete an I-9 Form on behalf of each employee within the first three days that the employee begins working. **If the company fails to complete the I-9, or does so incorrectly, he can face penalties from \$110 to \$1,100 for each violation.** Employers sign the I-9 form under penalty of perjury. Therefore, an employer can also be charged with perjury for false statements contained on the I-9 form.

Q What are the penalties for employing someone who is not legally **authorized** to work in the U.S.?

A. According to the Immigration Nationality Act, a company that knowingly uses illegal workers can be fined as much as \$10,000 per worker. Furthermore, if a pattern or practice of violating the law is found, the employer can face criminal sanctions and up to six months in jail. In addition, the Immigration and Nationality Act states that it is a "harboring" crime to knowingly employ 10 or more individuals in a 12 month period if the employer has actual knowledge of their **illegal** status. A conviction for harboring illegal workers can lead to imprisonment of up to 10 years.



Q Has there been an increased emphasis on immigration enforcement **recently**?

A. Yes, although the Immigration Reform and Control Act have been in existence for 20 years now, enforcement has generally been lax during most of that time. However, the creation of the Immigration and **Customs** Enforcement [ICE] in 2003 **as part of the Department of**

Homeland Security signaled an emphasis on **enforcement**, not only for illegal workers but for their employers. According to a recent ICE news release, criminal prosecutions were up **from 72 criminal prosecutions in 2003 to 168 criminal prosecutions in 2005.**

Q Can an employer **be** responsible for the illegal workers of a **contractor**?

A. Yes, **last year Wal-Mart paid \$11 million as a penalty for the illegal workers used by one of its contractors.** Wal-Mart argued that it should not be responsible since the **employees were not** direct employees of Wal-Mart but the government did not accept that defense.

Q. Is there a way that companies can verify the work authorization of an individual?

A. Yes, to help employers with the immigration document screening process, the U.S. Citizenship and Immigration Service has implemented a Basic Pilot Program which is a web based system that employers can use to verify the employment eligibility of workers. An employer can call the agency's toll free number at 888-464-4218 to obtain more information about the Basic Pilot Program.

Q. What is the typical method to employ a foreign national in the construction and landscaping business?

A. Temporary immigration options for U.S. employment are very limited but there is an "H-2b" category visa provision for seasonal, non agricultural work and is often used by the construction and landscaping industries to fill seasonal needs

Q. What are the criteria for the H-2b?

A. The employer can hire foreign nationals by arranging for them to get H-2b visas, but only if it can be shown that:

- (1) the job must be temporary [such as a one time, a seasonal, a peak-load or intermittent need];
- (2) the job will last for less than one year;
- (3) attempts to recruit qualified or interested U.S. workers have failed.

Q. Is there a wage requirement for the H-2b?

A. Yes, the employer must certify that the H-2b worker will be paid at least the prevailing wage for the application in the area of intended employment. The prevailing wage for the occupation is higher than federal minimum wage.

Q. How long does it take to get an H-2b Visa?

A. Generally the process for an H-2b visa takes three to four months to complete the entire application through the Department of Labor, the U.S. Citizenship and Immigration Service and the U.S. Consulate in the home country.

Q. How long is the employment authorization?

A. Because the H-2b visa is for temporary work, the employment cannot exceed 364 days. However, the employer can apply for recertification for additional years but each recertification requires a new application on a yearly basis.

Q. Can the employee change jobs after an employer has received the H-2b certification?

A. The H-2b certification is not transferable from

one employer to another. The certification is issued only for a specific job opportunity. If the employee wants to transfer to another employer then the new employer has to complete the certification process on behalf of the employee.

Q. Are there any limits to the number of H-2b workers that an employer can hire?

A. No, there is not a limit on the number of workers an employer can hire as long as the employer can show the need for the workers. However, there is an overall limit on the number of H-2b visas that are issued annually to all employers. The annual limit is 66,000 per year. The Save Our Small and Seasonal Business Act of 2005, which became effective on October 1, 2005, staggered the yearly limit into quarterly limits so that particular occupations cannot gain an unfair advantage of using the limit on H-2b visas within the first few months of the fiscal year.

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The advertisement includes four performance graphs showing Total Head in FT vs. Gallons Per Minute for different pump models:

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- CPES - 1/2 HP (Sump/Effluent)**: Total Head in FT (0-25) vs. Gallons Per Minute (0-100). Performance drops from ~22 FT at 0 GPM to ~10 FT at 100 GPM.
- CPES - 1/2 HP (Effluent)**: Total Head in FT (0-50) vs. Gallons Per Minute (0-50). Performance drops from ~45 FT at 0 GPM to ~10 FT at 50 GPM.
- CPWS - 1/2 HP (Sewage)**: Total Head in FT (0-35) vs. Gallons Per Minute (0-120). Performance drops from ~30 FT at 0 GPM to ~10 FT at 120 GPM.