

Immigration Reform

OVERVIEW

ABC supports the reform of U.S. immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity. Once the economy is restored, the construction industry will face an ever growing problem of shortages, both of craft-professionals and legal laborers who have difficulty becoming citizens or obtaining the necessary work permits. Unfortunately, the overall process to obtain legal eligibility in the United States is slow and cumbersome. ABC supports a more streamlined and expedited process to make the pathway to citizenship more efficient.

SECURITY ELEMENT

Homeland security can best succeed where individuals are truly identifiable. It is to the advantage of all security programs for the United States to provide a means to safely encourage non-U.S. citizens to register with their true identities. Thus, any significant immigration reform policy must contain that element. Further, without significant improvements to border security and the enforcement of immigration laws, a guest worker program is destined to fail.

TEMPORARY GUEST WORKER PROGRAM

ABC SUPPORTS

- Establishing a temporary guest worker program that would allow non-U.S. citizens to apply for the right to work legally in this country for multi-year renewable terms.
- Requiring employers to offer the same benefits to guest workers as they do to citizen employees, within the guidelines of the Employee Retirement Income Security Act.
- Offering the guest worker the possibility to obtain citizenship, provided the worker complies with all the requirements for establishment of citizenship under law. Any guest worker who is convicted of a felony will lose his/her guest worker status.
- Allowing workers participating in the guest worker program portability between employers during the term of the program, with a grace period to find another job.

- Requiring participants in the guest worker program to pay all taxes and other fees required of U.S. workers.

ABC OPPOSES

- Including “prevailing wage” requirements under the Davis-Bacon Act in any temporary guest worker program. (The Davis-Bacon Act/prevailing wage is addressed in more detail in a separate position paper).

EMPLOYEE VERIFICATION REQUIREMENTS

E-Verify is a system that electronically verifies the employment eligibility of newly hired employees. As of Sept. 8, 2009, the federal government requires the use of E-Verify on all federal solicitations and contract awards. However, Congress has not mandated the use of E-Verify for all employers.

If employers are mandated to use an electronic verification system—such as E-Verify—as well as comply with Form I-9 requirements, the following items should be considered.

A. SAFE HARBOR PROVISIONS FOR EMPLOYERS WHO USE OR ARE MANDATED TO USE E-VERIFY AND I-9 COMPLIANCE

ABC believes the government should not target or prosecute employers that enroll in and properly use E-Verify, or properly comply with Form I-9 requirements. Good faith compliance should be an affirmative defense that the employer did not knowingly hire an undocumented worker. Before imposing any civil or criminal penalties, the government should be required to prove beyond a reasonable doubt the employer had actual knowledge that the employee circumvented the electronic verification system/Form I-9 documentation.

B. PREEMPTION OF STATE AND LOCAL LAWS

Allowing each state and locality to promulgate its own employment verification laws creates an unworkable legal patchwork and poses an undue burden on businesses. Employers need a uniform legal framework to alleviate confusion about their responsibilities under the law. To date, nineteen states have enacted E-Verify laws as a result of the lack of federal law and guidance.

C. NO REVERIFICATION OF EXISTING EMPLOYEES

Requiring employers to re-verify the eligibility of their current workforce is not only unduly burdensome for business, it is unnecessary. However, employers who want to re-verify their existing workforce should have that option. Any new legislation must deal with employers already enrolled in E-Verify as well as federal contractors covered by the Federal Acquisition Regulation, who are already implementing E-Verify for many or all existing employees.

D. NO LIABILITY FOR SUBCONTRACTORS OR FRANCHISEES

ABC opposes “cross-liability” provisions that hold employers accountable for the workers of other employers with whom they have contracts, subcontracts or other forms of exchange. Small employers are particularly ill-equipped to manage and keep track of the hiring and firing practices of other entities with which they have business relationships. Employers do not have the authority to hire or fire the employees of other companies; they have no legal right to access the personnel files of those other companies and, in many instances, will never even meet most of the other entity’s workers.

E. ONE VERIFICATION OBLIGATION

Employers should not have to comply with two, duplicative verification obligations. Should a reliable E-Verify system be implemented for a given class of employers, those employers should no longer be required to complete and retain paper I-9 forms. Business owners who wish to retain paper copies of the electronic system’s confirmation of employment eligibility should be permitted to do so, and those paper copies should

be sufficient evidence that employment eligibility was verified. No business should be required to continue with two different methods of processing new employees.

F. VERIFYING EARLIER IN THE EMPLOYMENT PROCESS

If an E-Verify system for a certain group of employers is implemented, they should be allowed to begin the E-Verify process sooner. For example, it should begin when a job has been offered and accepted (currently acceptable under I-9 process), rather than the date the employee starts to work. This would make the system more efficient and make it possible to identify problems earlier in the process.

G. ADMINISTRATIVE AND TECHNICAL VIOLATIONS

Employers that participate in and comply with the E-Verify system and/or Form I-9 requirements should not be subject to excessive penalties or prosecution for minor violations of law, regulation and policy. The government should distinguish between substantive violations (intentionally hiring unauthorized workers) and technical violations (missing a filing date or an inadvertent error or omission on a form).

H. DOCUMENTATION

ABC is strongly opposed to any policy that shifts the burden of policing citizenship documentation, such as social security cards and drivers’ licenses, to employers. The majority of ABC’s 22,000 member firms are small businesses, which lack the time, resources, and expertise to effectively and conclusively determine whether they are being presented with fraudulent documents.