

ARE YOUR EMPLOYEES LEGAL?

It is the employer's responsibility to make sure he has no illegal aliens on his payroll. The penalties for not complying are strict.

by Richard I. Lehr

On Nov. 6, 1986, President Reagan signed into law perhaps the most sweeping statute affecting immigration and employment. The Immigration Reform and Control Act became effective on Jan. 1, 1987. A formal grace period—during which time employers did not receive citations for an initial violation—expired May 31, 1988. The act has two essential provisions of note:

1) If a company employs four or more, it may not discriminate based on citizenship or national origin.

2) Regardless of the number of employees, the employer must fill out Form I-9, indicating an employee's identification and eligibility to work.

No discrimination

An Office of Special Counsel in the Justice Department will investigate and prosecute alleged discrimination based on citizenship or national origin. A special panel of administrative law judges will hear these cases. An administrative law judge decision may be appealed to the United States Court of Appeals.

If the Special Counsel fails to bring an action within 120 days after receiving notification of the alleged complaint, a person can take legal action through private counsel. If a winner, the person is entitled to receive at-

torney fees, costs, reinstatement, back pay and other compensation.

"Citizenship status" as a basis for discrimination refers to someone who has or is intending to apply for United States citizenship. Thus, discrimination could be the case if a person applied for a job, provided the appropriate alien documents and was otherwise qualified for the job—yet was not hired.

While Title VII of the 1964 Civil Rights Act covers employers with 15 or more employees, the anti-discrimination provisions of the Immigration Act cover employers with four or more employees.

The new act does not require affirmative action when employers are considering hiring a person seeking U.S. citizenship. If an alien applies for employment and is as qualified as a United States citizen, the employer may hire the citizen as a preference without violating this act.

As a practical suggestion, employment applications that give company philosophy on not considering certain factors (race, color, religion, etc.) as a basis for employment, should also add "citizenship status" to that list.

Citizenship status

An employer must verify the citizenship status of applicants for employment. Four steps must be taken:

1. The employer must examine the appropriate documents before hiring.

2. The employer must verify Immigration and Naturalization Form I-9:

(a) that the appropriate documents regarding citizenship have been reviewed by the employer and (b) the employee who is hired is not an illegal alien. The verification must be completed within three days of when the employee begins work.

3. The employer must be sure that the employee completes the "employee" provisions of the form.

4. The employer must retain this form for a period of three years, or one year after the employment relationship is terminated, whichever is longer.

Employers are not required to retain copies of the documents provided by the employee, just a copy of the I-9 form.

The three categories of verification documents are: Group A, Group B and Group C. According to the act, any one of the following Group A documents would be sufficient to establish employment authorization and identity:

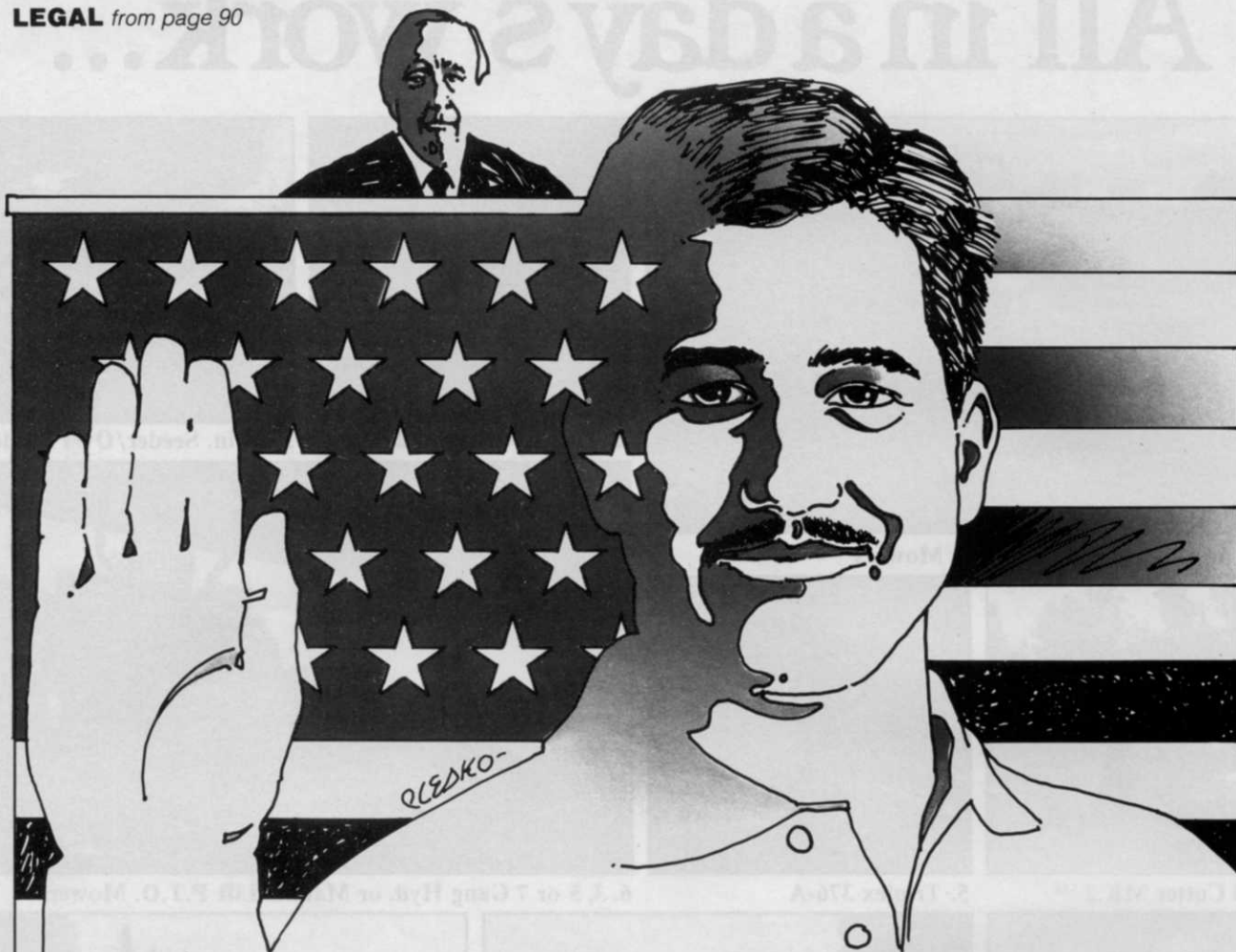
- U.S. passport; or
- certificate of U.S. Citizenship; or
- Certificate of Naturalization; or
- unexpired foreign passport; or
- Resident Alien Card or another type of registration card approved by the Attorney General.

Group B documents relate to only employment authorization. Group C documents relate to only the identity of the alien.

If presented with a Group B type of document, you then must also review a Group C document relating to identity. A Group A document covers both identity and authorization.

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The following are Group B documents:

- Social Security account number card; or
- certificate of birth in the United States; or
- establishment of U.S. nationality at birth as approved by the Attorney General; or
- any other documentation approved by the Attorney General that demonstrates authorization of employment in this country.

Group C documents are considered to be either:

- a driver's license, or a similar document, provided that it contains a photograph or other personal identification approved by the Attorney General; or
- (for applicants under age 16) other documentation that has been approved by the Attorney General.

Note that you are not required to

make a copy of any of the documents you are presented by the applicant. The act requires you to examine the document, which presumably means that you may examine a copy.

If the document you have reviewed appears to be genuine and if it meets the standards of a Group A, B or C document, do not ask for any further identification. It would be discriminatory, for example, to request all documents in all groups, when one document in Group A or one document each from Group B and C would be sufficient.

If you are concerned about hiring a person while waiting for citizenship verification, we suggest telling the person in writing that his continued employment will be contingent upon the verification. Practical suggestions:

1. The act does not require employers to document employees who were hired prior to Nov. 7, 1986. However,

there may be other immigration-related requirements that apply to employees hired prior to that time, such as student employment or employment while an immigration application is pending.

2. The verification method anticipates an employer reasonably concluding whether it appears to be genuine. If an employer has any doubt about the genuineness of a document, ask the applicant if he has the original or another document that would satisfy the Immigration Act. If the person does not have such documents, then tell him that under the act, you believe you are required to seek verification from the agency involved.

3. Begin the document verification process after you have decided that the person is otherwise qualified for the job. If the person is hired before final verification, tell him or her that continued employment is contingent upon verification, within three days of when the individual begins to work.

4. Let the individual know that it is his or her obligation to report to you promptly any change in citizenship status.

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Answer file: illegal aliens

How many undocumented aliens reside in this country? Between 3 and 12 million.

What is their growth rate? Annual growth since 1980 has been between 100,000 and 300,000. More than 1 million undocumented aliens have been apprehended each year along the U.S./Mexico border.

What is the current ceiling on legal immigration? 270,000 per year.

This figure, however, does not include the unlimited categories of immigrants, such as immediate relatives of U.S. citizens and refugees. If they are included, the total legal immigrants approximate 570,000 each year.

How much does illegal immigration cost United States taxpayers? According to a 1983 study by the Immigration and Naturalization Ser-

vice, each 1 million undocumented aliens costs federal, state and local governments \$2.5 billion annually in job displacement, police costs, education, welfare benefits and unemployment insurance. An estimated \$995 million was paid in taxes, resulting in a net government loss of \$1.2 billion per million undocumented aliens. □

5. If you rely on employment services or state employment agencies to refer employees to you, be sure to find out who is responsible for the employment verification process. If done by them, ask them for a copy of the form they use to verify the individual's documentation, and include a copy of that in the personnel file.

Employer risks

Employers who violate the act face severe penalties, both civil and criminal. For a first offense, the fines range from \$250 to \$2,000 per unauthorized

alien employed; \$2,000 to \$5,000 for a second offense; \$3,000 to \$10,000 for a third offense. These penalties will not attach to the employer until after a hearing is set. A defense to this would be the good faith effort that the employer made to review the propriety of the documentation before the individual was hired.

In addition to the civil penalties mentioned above, criminal penalties may include up to six months imprisonment and a \$3,000 fine per unauthorized alien if the employer is found to have engaged in a pattern or

practice of violating the Immigration Reform and Control Act.

Those individuals who were hired prior to Nov. 7, 1986, are exempt from this statute. However, the individual employee is not protected if he has violated other provisions of immigration laws that existed prior to this act.

Employers who attempt to assist in the registration of illegal aliens for permanent status must still comply with the procedures that were in place prior to the enactment of the Immigration Reform and Control Act of 1986. **LM**

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