

Crackdown costs

Lack of immigration reform, climate of fear has a high price tag for employers
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More undocumented workers are seeking legal status and more employers are seeking advice on helping their workers stay in the United States, according to Chapman, whose law firm specializes in obtaining both permanent and temporary visas, aiding with naturalization applications and assisting in deportation and asylum cases.

"There is a high amount of anxiety over this whole issue right now," Chapman said. "For the workers who don't want to leave, the reasons are obvious. But employers are anxious because they know how hard it is to find good people like these if they lose them."

For the restaurant industry, the current climate surrounding immigration, and more specifically the lack of what some industry members call "reasonable reform," has high costs. And those costs – both monetary and emotional – have been coming further into focus in recent months, as stepped-up sweeps lead to employee turnover, business closures and mounting fear.

Earlier this year, Immigration and Customs Enforcement, or ICE, uncovered the possible use of suspect documents to verify eligibility for employment at Chipotle Mexican Grill units in Minnesota. Although the Denver-based fast-casual chain has maintained no wrongdoing, the sweep reportedly led to the loss of 450 Chipotle employees in Minnesota and was having a further impact as the investigations by ICE spread east to Virginia and Washington, D.C. In February four analysts downgraded Chipotle shares given concerns that the 1,100-unit chain would face higher labor costs in the future following ICE's investigations.

Shortly thereafter, an investigation by the Maricopa, Ariz., sheriff's department led to the arrest of 26 workers at several local Pei Wei Asian Diner units for allegedly using false identities when they applied for jobs. The arrests led to a multiweek closure of the Pei Wei units as new employees were hired and trained.

Targeting employers

ICE shifted its focus from employees to employers about two years ago and reportedly notified in February up to 1,000 employers across all industries, including foodservice, that their records would be inspected as part of a crackdown on businesses suspected of hiring undocumented workers.

As of March 2010, there were an estimated 11.2 million unauthorized immigrants living in the United States, according to the Pew Hispanic Center. Pew estimates that the restaurant industry employs about 12 percent of the country's undocumented workers.

The National Restaurant Association has argued that comprehensive immigration

reform is needed given an economy that has a notable dependence on immigrant labor. Ideally, according to the NRA, Congress should increase border security while also creating a workable employment verification system and a path to permanent residence for some undocumented immigrants. In the meantime, lack of reform is having a broad impact.

While the hurdles are evident for those working illegally, even documented laborers with temporary visas are increasingly concerned. Those visas typically last only a year in industries such as restaurants, construction and landscaping. For businesses, replacing and training those employees can be costly given lost productivity and mountains of paperwork required for hiring and training, Chapman said.

Several sources said the problem is exacerbated by the lack of legal workers willing to fill unskilled labor positions. Operators contend that many legal candidates are either uninterested in the work or simply overqualified, justifying the need to allow foreign workers to remain here longer, Chapman added.

"Let's say a place like Microsoft needs a temporary worker who is college educated; that person can obtain a three-year temporary work visa," Chapman said. "But if you want temporary construction workers to build a new plant for Microsoft, the government won't let those workers stay more than a year. That's a problem."

'A human issue'

Chris Lusk has experienced that frustration firsthand. As executive chef at Café Adelaide at the Loews New Orleans Hotel, Lusk hires immigrant cooks who bring strong skills to his kitchen. Yet they can stay only a year despite the company's investment in their training and the workers' desire to remain in the United States.

"That constantly breaks up your team ... the family in the kitchen," Lusk said. "And when you see what these guys go through to get here legally, it's very expensive and difficult. That's when it becomes a human issue and not just a legal one."

Mehrzad Sharbaiani, owner of Z's Fusion and Z's Oyster Bar, said he has no problem filling positions at his restaurants in Louisville, Ky., and Indianapolis. Getting quality workers in those roles, however, is another story. He said his immigrant employees are hardworking, dependable and courteous, and willing to do jobs many American workers won't.

"If these changes result in us getting rid of a lot of the Hispanic workforce, I don't know what's going to happen to this country, much less my restaurants," said Sharbaiani, who immigrated to the United States in 1979 to study engineering. Non-immigrants "look at you as if you're crazy when you ask them to sweep the floor. The whole workplace is evolving, and I don't know who we're going to get to do that type of work if something doesn't change."

In the past, Sharbaiani tried paying higher rates to lure American workers into low-skill restaurant positions, but he said that strategy didn't get the employees to show up for work consistently.

"I've never had that problem with Hispanic employees. I honestly think the problem there is the American public has become well educated and has, in their minds, graduated from doing that type of work."

Ben Kurten, chair of the immigration department at the law firm of Reinhart Boerner Van Deuren in Milwaukee, said increased government pressure on employers to police applicants' documents will create an administrative burden that will require added manpower to ensure compliance.

"Employers are realizing that the I-9 [employee verification] process is maybe more important than they thought it was and that they can't foist it off on a lower-level person," he said.

He added that fear of an audit or violation has some business owners re-educating themselves and their staffs on the particulars of the application paperwork, "or hiring a lawyer or using software to help with that. You have to set up a system that helps you stay on top of that, and really, that's a cost."

Beth Schroeder, chair of the hospitality law group at Silver & Freedman in Los Angeles, said the approval system is already simple and should not require extra effort if employers are already doing it correctly.

"You don't have to have a special compliance officer and make it complicated, you just have to make sure you have all your I's dotted and your T's crossed," said Schroeder, counsel to several large restaurant chains. "The I-9 is just another document, like a tax form, that you have to do. And if it's done correctly it shouldn't require any additional time or money."

E-Verify

The stepped-up enforcement also occurs at a time when both federal lawmakers and individual states are considering policies that would require all employers to use the government's E-Verify system, an Internet-based employment eligibility verification program that currently is voluntary.

Given the anxiety that restaurateurs are operating under these days, the NRA is considering supporting an E-Verify mandate bill – but only if lawmakers include liability and other safe harbor protections for employers that use it.

Whether or not E-Verify is mandated, attorneys and industry observers say the message is clear for both large and small restaurant companies: Make sure proper hiring procedures are in place and your paperwork is in order.

Rob Perez, owner of Saul Good Restaurant & Pub in Lexington, Ky., agreed.

"Our experience is that if you're diligent about it, you can generally ensure you're compliant," said Perez, a veteran of Hard Rock Cafe and ESPN Zone, where he learned strict paperwork standards. "Those companies used a third party to validate worker documentation, but that kind of cost would have a negative impact on a business this size, so we do it ourselves."

Sharbaiani said his managers audit the company's employee I-9 file every four to five months to ensure it's current.

"We do it religiously to make sure they're complete," he said. "That's not something I want to have a problem with."

Costly perceptions

Short of a full-on raid that purges a staff and forces a restaurant to close, word that an establishment was fined for hiring undocumented workers could damage its image in the community and harm sales, Kurten said.

"There could be the cost to goodwill and your public reputation if that happens," he said. "People see that and it bothers them to the point they might not come to your restaurant. Or it could go the other way if customers sense a change in the restaurant and think, 'They were great until they had to get rid of their staff.'"

Some restaurateurs called the renewed crackdown on undocumented workers too harsh a reaction to an issue that's been loosely policed in the past.

"Fifteen years ago everyone turned a blind eye to those folks, and now the government wants us to clamp down on them," said one restaurateur who asked not to be identified. "These are people who've worked for me for years, people who are getting the market wage, not low-balled, who always show up for work and are conscientious and good people. I'm worried about them."

Sharbaiani agreed.

"We let this happen," he said. "We knew this was happening all along. They're very visible in our communities working everywhere, not just in restaurants, yet not much has been done about it. So now all of a sudden something's changed?"

Like Lusk, Sharbaiani views the whole problem more as a human issue than a legal one. Though he entered the United States legally, he came here near the height of the Iranian hostage crisis and found himself without personal or school funds when his parents could no longer send him money from Iran. Desperate for work, he began bussing tables at a fine-dining restaurant, which eventually led to his current role as an owner. He said he'd like to see immigrants – legal or not – be granted amnesty and given a chance to make the best of a bad situation.

"Why don't we give them a work permit and allow them to pay taxes, right? How could that hurt?" Sharbaiani asked. "That's the better way of battling this situation. I've hired so many of these people because I know they're constantly going to show up, never call in sick or not wanting to work. They're loyal and effective. That adds productivity to our business."