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Immigration and the hospitality industry

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MHA 791- Professional Paper

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"Immigration and the Hospitality Industry"

Introduction

The purpose of this study is to correlate the research of immigration reform and the potential impact on the hospitality industry. For over a century, numerous debates and policies have been discussed and developed addressing the issue of immigration. The history of immigration policy shows that legislation was passed to address the current concerns for each of the past several decades, but additional changes are constantly needed in order to support the continued growth and changes of the nation. History also shows that some of the laws that were created to control immigration actually initiated larger issues, which led to additional legislation, which left loopholes in the verification process.

During the same time frame, the history of the hospitality industry dealt with changes in employment practices in order to comply with the legislation that directed the United States. The hospitality industry has been challenged with finding both skilled and unskilled labor, lowering turnover and making the industry more attractive to potential employees. While facing these employment challenges and changes to immigration policies, the hospitality industry found employment solutions often times through immigrants. With the change in immigrant legislation and employment laws, the industry faced the challenge of not only finding skilled labor, but also ensuring that the employees were legal to work in the United States.   One of the more recent forms of legislation that challenges the industry is the implementation of the electronic employment verification system (E-verify). This study will review the implementation of tighter immigrant and employment policies, the continued labor shortage, and the potential cost to the industry.

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Immigration reform has been on the forefront of United States policies for many years. In the 1900's, the issue developed into a concern that needed better controls due to the increasing number of immigrants entering the country illegally. There have been various opinions as to the benefits or the problems created by the immigration. The challenges that the illegal immigration created included having a proper agency to validate, verify and account for individuals entering the U.S., the validity and accuracy of proper documentation and the clarification of said documents across state boundaries, the consumption of employment and the ultimate impact that these individual had on the economic environment of the country. This paper will review the history of immigration reform and discuss the challenges created by the changing landscape of the various types of reform. This will include a review of the agencies that are involved along with the practices created for businesses to interpret. In addition, the study will review the impact on the employment market and how many immigrants; legal and illegal are employed in the United States. Many of the immigrants that arrived illegally in the U.S. have little or no skills, which made the hospitality industry an attractive venue for employment. "The hospitality industry has been, in fact, the largest employer of unskilled labor in many countries." (Choi et al, 2000). There were an estimated 2 million of the 23 million foreign-born workers in the U.S. who hold food preparation and service jobs. (Healy, 2009) Immigration reform has had an impact on the hospitality industry and specifically in Arizona, where the state has mandated the most aggressive reform to date. This paper will review the decisions made by Arizona to help better understand what the overall impact could be on the hospitality industry.

Purpose

The purpose of this paper is to research the correlation of immigration reform and the impact on the hospitality industry. The goal is to help better understand the impact, both positive and negative, that immigration legislation has on the industry and what implications may be created from the implementation of standards that may increase the ability of employers and federal agencies to better identify the legal employment status of current and future employees.

Statement of Problem

For several decades, the hospitality industry has been plagued with the challenge of finding competent employees to adequately staff the business in order to accommodate the needs and services of guests. Due to this challenge, employers often turn to immigrants to staff their business. Employers prefer to hire newly arrived immigrants because they are different from the local work force and the right attitude toward low wage and difficult jobs which are common in the hospitality industry (Waldinger et al, 2003). In addition, the labor force is aging and birth rates are below the replacement rate (Taylor et al, 2009). Labor shortages are impacting most of the high-income countries of the world and the USA is one of the countries most affected by these population trends (Hansen, 2003). While many companies have relied upon legal programs to staff their businesses, such as guest worker programs, a labor shortage still exists which had led employers to hire immigrants that may not be here legally. Restaurants have a high turnover rate and need to hire workers to fill a constantly rotating kitchen staff. In many cases, illegal immigrants can end up on their roster (Bowman, 2010). With an estimated 12 million immigrants in this country and an estimated 1.4 million immigrants working in foodservice operations alone, (Frumkin, 2009), immigration reform, and E-verify specifically, may have a major impact on the hospitality industry.

Statement of Objective

This paper will review the recent history of immigration reform and discuss the progress that legislators have made in order to address the challenges of illegal immigration. Each of the three former Presidents of the United States introduced new legislation to address immigration. As legislature has been passed, other challenges, such as verification of eligibility and enforcement of new policies, have come into question. With such questions being created, illegal immigrants find opportunities for work for many employees who do not possess the education or skills for other jobs (Choi et al, 2000). Employers were unwilling or unable to verify the authenticity of documents making the federal probation on the hiring of illegal workers nearly meaningless (Rector, 2008). In addition to the challenge of employment verification, the agencies charged to maintain the policies also changed. From the Social Security Agency to the Department of Homeland Security, there has been confusion about which agency was ultimately responsible to force adherence to the policies.

Justification

Immigration reform has a direct impact on the labor issues facing the hospitality industry. History reveals that immigrants have played an important role in assisting the hospitality industry in addressing staffing issues. Many immigrants come from third-world countries and are willing to perform jobs considered undesirable to people who already live in this country. As immigration reform potentially finds a foothold through the electronic verification system, employers may be faced with a shrinking labor pool along with higher wages and increased costs due to hiring and training new employees.

Constraints

There are eleven states that have implemented the E-Verify system to varying degrees, Arizona being the strictest by requiring that all employers use E-verify. Research has yet to be published as to the specific impact of the E-Verify system on the hospitality industry. Coincidentally, the recession that started in the last quarter of 2007 had a major toll on employment nationwide. A direct correlation between the implementation of E-Verify and the results of unemployment may be difficult to decipher due to the timing of both events.

History of Immigration Reform

Immigration was crucial to the development of the U.S. economy and the workplace in the 20th century. In 1900, nearly half of one million individuals passed through immigration control, and for the entire first decade of 1900, there were 8.2 million. Most immigrants of the legal working age had come to find employment and a better living in the United States. Most were laborers with little or no skills, who would work for a minimal fee. In 1998, there were 660,477 legal immigrants; and for the decade as a whole, there were close to 10 million (Fisk, 2003). Today, it is estimated that there are over 12 million legal immigrants in this country.

Since the 1900, there have been over 120 various forms of revision and legislative changes. As the population increased, so did the legislation to control the inflow. Most of the early immigration policies dealt with the barred entry of individuals from Asia, including China, Japan and Korea. In 1921, the Quota Act was introduced to set percent quotas that dictated a gradual introduction of any foreign born immigrants. In 1924, the U.S. Border Patrol was created to support the newly formed Immigration Service and also set limits on immigrants from the Eastern Hemisphere.   In 1952, Congress placed into law the Immigration and Nationality Act that created an agreement with Mexico and the U.S. to allow seasonal labor into the U.S. to help the agriculture industry, designated through the distribution of the

H-2 visa. The act also abolished exclusions against Asian countries and created a system that gave

preference to foreigners with education or skills. While this act helped to relieve the need for migrant

workers to assist temporarily in the country, it created the opportunity for immigrants to find a home in

the U.S. and presented the opportunity for additional legislation. In 1965, the nation's immigration

policy was amended once again and created a system designed to unite immigrant families and to

attract skilled labor to the United States.

It wasn't until 1986 that legislation was passed that addressed the employment of illegal aliens

in the United States. President Ronald Reagan signed the Immigration Reform and Control Act (IRCA).

The goal of IRCA was to create amnesty for the approximately three million illegal workers living in the

U.S. and, in return, Congress promised voters that the government would take effective measures to

eliminate future illegal immigration (McNeil, 2009). Under Title I of the control act, lawmakers looked to

set controls on the unlawful employment of aliens in the U.S. and address the fraud and misuse of

certain immigration related documents (OIG.lsc.gov). Under Section 274A, entitled Unlawful

Employment of Aliens, the act defines the Examination of Documentation and state "if an individual

provides a document or combination of documents that reasonably appears on its face to be genuine

and that is sufficient to meet the requirements…nothing shall be construed as requiring the production

of any other document". These documents included a U.S. passport, a certificate of U.S. citizenship,

certification of naturalization, unexpired foreign passport, resident alien card, social security card, birth

certificate or other documentation evidencing authorization of employment in the United States. The

promise of real enforcement was never fulfilled because illegal workers were able to obtain forged

documents purporting to that they were either lawful immigrants or U.S. citizens (McNeil, 2009).

Furthermore, employers were unwilling or unable to verify the authenticity of these documents, making

the federal probation of the hiring of illegal workers nearly meaningless (Rector, 2008). The promise of

amnesty also created bigger challenges for the country. With three million applicants working to meet

the stipulations for amnesty, there wasn't ample funding to handle the demand and created a situation that fueled generation of illegal aliens. With the chance to work legally in the United States, immigrants continued to stayed in the country even though their visa or alien status expired, making them illegal to work in the country. IRCA reformed the classification of the H-2 visa. H-2A addressed temporary employment for immigrant agriculture workers while the H-2B visa is for non-agriculture employment. (Seminara, 2010)

In 1996, Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA) which required the hiring of additional border patrol officers as well as Immigration and Naturalization Service (INS) agents. While the bill was intended to tighten the controls on illegal immigration, it actually addressed and expanded the scope of issues such as proof of vaccination of immigrants, health care reforms, public education reforms as well as limitations on visas. The IIRIRA also initiated three pilot electronic identification employment programs designed to support the system created by the 1986 IRCA. One of these three programs, the Basic Pilot/Employment Eligibility Verification Program, would evolve to what is known today as E-verify.   After the events of September 11, 2001, there was an abundance of legislation proposed including the Border Protection, Anti-terrorism and Illegal Immigration Control Act of 2005, the Comprehensive Immigration Reform Act (CIRA) of 2006 and the Comprehensive Immigration Reform Act (CIRA) of 2007. For various reasons, none of bills were enacted. The most current immigration reform bill to be introduced is called the Comprehensive Immigration and Reform for America's Security and Prosperity Act of 2009. While current legislation is intent on controlling continued immigration into this country, laws still need to address the employment of illegal immigrants *already* employed in this country.

Enforcement of Immigration

As new policies were created to help control the flow of immigration into the United States, agencies needed to be created in order to help address these changes. In 1935, the Social Security Agency (initially named the Social Security Board was created Roosevelt administration to address the increase of immigrants from Europe as well as the changes of the United States to a less-rural, more industrialized country created by the Great Depression. It also helped to create a social insurance program to support people over the age of 65. By distributing newly created social security numbers, the agency could verify an individual's rights to work in the country in addition to the benefits received upon reaching the age of 65. The agency was officially changed to the Social Security Administration in 1946 to address the growing number of immigrants created by conclusion of World War 2. The change came as a part of the 1946 Federal Reorganization Plan created by President Harry Truman. In 1953, President Eisenhower eliminated the SSA as an independent agency and placed it under the umbrella of the newly formed Department of Health, Education and Welfare. President Nixon introduced a significant change to the Social Security agency when he introduced Social Security Insurance (SSI). This provided disability insurance for workers that were injured on the job. The new millennium brought about changes that addressed the integrity of social security numbers. The event of September 11, 2001 brought about great scrutiny as to the individuals allowed in the country and the potential harm that could be created by their illegal presence. From this change, the Department of Homeland Security (DHS) was created. The DHS and SSA worked in tandem to verify all immigration documents for citizens requesting social security numbers. The DHS is also responsible for the Federal Emergency Management Agency (FEMA) and Immigration and Customs Enforcement (ICE). The United States Citizenship and Immigration Services (USCIS) began as the Bureau of Immigration. In 1906, was renamed the Bureau of Immigration and Naturalization. All of the agencies combined to create a complex web of immigration reform and enforcement in the United States.

The History of Hospitality Labor Shortage

The labor shortage in hotels and restaurants has been an issue facing the industry for over fifty years. In 1963, Winsor discussed the labor shortage that affected the hotel industry throughout the United States and Canada. The largest shortages were noted in the area of food service and food preparation along with room service personnel. In discussing the possible causes, it was noted that "the food service industry is handicapped still by the restrictive U.S. Immigration policy that cuts off the former supply of chefs from Europe." When discussing the challenges facing the hotel industry in the late 1970's and early 1980's, Beck (1976) stated that "food service is expected to continue to suffer from labor shortages and turn increasingly to more limited service". The labor shortage was intensified by high turnover and a current shortage of skilled workers. In addition, Beck wrote that "housekeeping is seen…as an operating area with insurmountable problems of worker recruiting and training". Woods and Sciarini (1995) researched the benefits of creating diversity in the work place as a means of offsetting potential shortages in labor markets.   "The benefits included competitiveness through ease in recruiting scarce labor, increased sales to minority-culture groups, increase creativity and innovation, enhanced problem solving, enhanced organizational flexibility, increased abilities to acquire resources and enhanced social responsibility". In 2004, Enz surveyed 448 restaurateurs and asked them discuss their top concerns.   "A key problem is that the low wages, meager benefits, limited training and long hours lead to high turnover, an unstable workforce, poor service delivery, and the impression that the industry is an undesirable employment option for the long term." It becomes clear that, regardless of the current challenges and obstacles in the hospitality industry, labor remains a constant as a main concern amongst hospitality owners and operators. Current unemployment data shows that nearly 10 percent of the U.S. is currently unemployed. So, how is it that the hospitality industry still faces a labor shortage?

Throughout the early studies, it was suggested that better education and awareness of the hospitality industry would help to motivate younger individuals to consider working in the industry as more of a career and less of a step towards another path (Winsor, 1963). Ideas such as improving the image of the industry develop continued-education and training programs and recruiting more actively on college and community college classes would help to reduce the labor shortage (Beck, 1976). Once the industry started to view employees more as investments and less as expenses, it would ideally lower its turnover and diminish the need to hire during a labor shortage. Increased motivation through better wages and hours, affordable benefits, and training and development are amongst the most recommended solutions for the industry in recent studies (Enz, 2004) (Tracey and Hinkin, 2006). While these suggestions address some of the issues caused by a labor shortage, there continues to be a demand for skilled and unskilled labor who will work for lower wages. The hospitality industry operates on very tight margins and controlling labor costs are of the highest priorities in the industry. In addition, many of the entry level jobs are less desirable and may not appeal to a younger generation that is not willing to perform some of the required tasks. "Employers prefer to hire newly arrived immigrants because they are different from the local workforce and have the right attitude toward low wage and difficult jobs which are common in the hospitality industry" (Waldinger and Lichter, 2003). As Seminara (2010) states, "Americans don't want to mow your lawn. They don't want to serve you your lobster roll sandwich during your summer holiday in Maine. They won't drive the trucks that bring food to the grocery store you shop in, chop down the trees that produce paper you use, or perform at the circus you attend every summer". "Restaurants… need to hire workers to fill a constantly rotating kitchen staff. In many cases illegal immigrants can end up on the roster (Bowman, 2010). With no biometrics, no ability to authenticate either the new hires documents or information or to identify, the process was difficult for even good faith employers."(Kephart, 2008)

The Cost of Turnover

Labor expense is the largest expense in hotels, motels, clubs and many restaurants. (Schmidgall, 2006). Labor costs are a key issue for everyone (including presidents and senior managers), but the challenge of sustained profitability is felt most strongly by owner-operators (Enz, 2004). Not only does labor include hours worked, taxes, bonuses and benefits, but it also includes overtime, payroll violations and training dollars that incur when an operation is not properly staffed. Turnover is very common in the hospitality industry. This is a serious problem because the money invested in recruitment, selection, training, and compensation of a new worker becomes a financial loss for the organization (O'Connell & Kung, 2007). The hospitality industry has reported annual turnover rates ranging from 32 percent to 300 percent. (Cho et al, 2006). Along with high turnover, comes the high cost of replacing these former employees. The averages may range as little as $3,000 for an hourly employee to as much as $50,000 for a manager. (Woods et al, 2006). In the United States, estimates for employee turnover costs are $5 trillion annually (Journal of Business Strategy, 2003).

According to Aksu (2008), there are several factors that are included in the replacement of a terminated employee. Communicating job availability is the first expense that occurs when a job becomes available. Some businesses may choose to utilize a contract service to assist in attracting qualified employees and the cost may run upwards of $3,000 per hired employee. Pre-employment administrative functions, such as accepting applications and checking references are the next step in the cost-chain. Some companies spend more money due to extensive background checks or aptitude analysis. Entrance interviews are soft costs that are difficult to measure and would vary depending on the extent of the interview process. Testing or other types of assessment procedures cost companies that have established competencies prior to employment and may have a pay per use system to evaluate the relevance of the candidate. Employee meetings costs would vary depending on the pay

rate and the resources required presenting an effective meeting. Regardless of the formula or the exact figures used to calculate the cost of recruiting, hiring and training new individuals, turnover is extremely costly to employers.

E-verify

As immigration reform was debated in Congress, E-verify continued as the one form of legislation that was making an impact on the employment of illegal immigrants. E-verify is currently a voluntary program that is run by the U.S. Government through the Department of Homeland Security (DHS) and the Social Security Administration (SSA). "The key to the program is to maximize the facilitation of legitimate hires while also maximizing the opportunity to terminate illegitimate hires" (Kephart, 2008). The E-verify program has been mandated in several states and in 2008, President Bush ordered that all federal contractors utilize the program. Eleven states, including Arizona, Colorado, Georgia, Indiana, Minnesota, Mississippi, Missouri, North Carolina, Oklahoma and Utah have also mandated the use of the E-verify program. The most recent data shows that there are over 85,000 employers representing 446,000 sites with 6.21 million queries processed. As the program starts to spread and impact more states and employers, there is a possibility that the verification process may have an impact on the hospitality industry, creating a bigger challenge for an industry that is historically challenged with labor shortages.

Electronic employment verification, along with recent immigration reform, has received a lot of attention due to the potential impact on employment practices. Proponents believe that electronic employment verification programs, such as E-verify, have reduced the hiring of illegal aliens in the United States and assisted with the reduction of unemployed Americans. In addition, there are thoughts that some illegal immigrants have returned to their country of origin, therefore reducing costs for additional border patrol, expenses to the health care and education systems, and lowering the burden

on employers who may inadvertently employ an individual who is not properly documented to work in the United States. Others discredit the system, stating that the system is inaccurate and that some illegal immigrants are still getting through the system and finding employment in the workforce. Both sides of the debate will be reviewed in detail along with the potential impact that electronic verification could potentially have on the hospitality industry.

According the Center for Immigration Studies (2008), the E-verify system is well on its way to fixing a 20-year old problem of determining legal employment eligibility in a manner employers can support. The following are the basic steps to the E-verify system:

1. An employer enters the employee's information including their name, social security number and date of birth into the on-line database.

2. The information is transmitted through the databases of the Department of Homeland Security (DHS) and the Social Security Agency (SSA). The information is cross-referenced to determine whether it corresponds to a U.S. citizen or work-eligible immigrant.

3. If the information cannot be verified by the DHS or SSA, the information is then sent to the United States Citizenship and Immigration Services (USCIS). The employee's information is then checked against other DHS databases.

4. If the data is confirmed through one of the databases, the employer receives a positive confirmation notice certifying that the employee is eligible to work

5. If the employees input does not match any information in the SSA, DHS or USCIS databases, E-verify allows the employer the opportunity to re-verify the employee's information. If there is a clerical error, the employee's data can be re-submitted and the process starts again.

6. If the employee cannot be confirmed after checking for clerical errors, the employee has eight days to correct the non-confirmation with the SSA or USCIS.

7. If the employee chooses not to contest the non-confirmation or has not provided information to support the non-confirmation, the DHS sends a final confirmation to the employer.

8. Upon receipt of the non-confirmation, the employer must either discharge the employee or inform the DHS that they intend to retain the employee with the belief that there is an error in the verification system and that clarification will be resolved at a later date.

Westat, a research group in Rockville, Maryland, has completed extensive research on the E-verify system. Much of the information in this study is reflective of the information found from Westat.

The E-verify program is relatively expedient, returning a positive or negative outcome to the employer within hours of the input. The overall accuracy, according the Department of Homeland Security, is 93 percent when verified within the first five seconds. As the data, such as Social Security numbers or Alien Resident cards, is verified further throughout the USCIS system, there is a 99.5 percent accuracy rate. Since the program's inception in 2004, the usage by employers has increased dramatically. In July of 2004, the number of inquiries to E-verify totaled 55,000. By the end of 2008, there were over 1.7 million inquiries in the fourth quarter. In total, there have been over 9 million submissions to the E-verify system.

The costs were relatively low for employers with an initial cost of $100 for E-verify and an annual maintenance cost of $400 for small companies and up to $9,000 for large companies. The difference in the costs varied from companies was due to the increase of administrative wages required to initiate and process the employment information and to manage the maintenance of materials, along with computer software and hardware. The real savings could be realized in the avoidance of penalties and raids from the Immigration and Customs Enforcement (ICE). ICE has the responsibility to enforce the laws and policies that coincide with the practices from the Department of Homeland Security as well as the Social Security Administration. These two agencies are charged with the proper documentation

and verification of illegal immigrants, but don't have the resources to physically enforce the policies. In

2008, ICE made more than 4,900 arrests in worksite enforcement including over 800 arrests for criminal

violations. In addition, ICE obtained more that $31 million in criminal fines. In July 2009, Krispy Kreme

Doughnut Corporation was fined $40,000 for I-9 violations at one of its stores in Ohio. In August 2009,

Texas-based Shipley Do-Nut Flour and Supply Company Inc. was sentenced to court supervision for three

years, and paid a criminal fine of $250,000 and forfeited $1.3 million in assets for harboring

unauthorized workers (Kalmykov, 2009). By utilizing the electronic employment verification process,

employers can expect to avoid penalties and possibly reduce turnover if an employee is found to be

illegally employed.

In regards to the effect on the economy, reports have shown that E-verify could have a

significant impact on taxes and wages. Bear Stearns, a former Wall Street Investment firm published a

report that there are between 9 million and 20 million illegal aliens in the United States. Most estimates

put that number closer to 12 million. According to the report, roughly 4 to 6 million jobs have shifted

"underground", meaning that the employees are being paid cash are therefore removing approximately

$35 billion a year in income taxes. It is estimated that 1.8 million American workers are displaced from

their jobs every year by unauthorized workers and that providing unemployment benefits to these

Americans costs $15 billion a year. In addition to the estimate that illegal immigrants are displacing 1.8

million American workers, there is also a concern that they are driving down wages, taking jobs for half

the amount of wage that might have been paid at union scale. In 2006, the Washington Times examined

the pattern of wages in the industries that most often employ immigrant workers. From 2000 to 2005,

inflation adjusted wages rose modestly, but then dropped significantly in the latter years of the study.

Initially, jobs that were paying upwards of $12 an hour plus benefits were reduced to near minimum

wage with no benefits. "The nation's restaurateurs, hoteliers, contractors and cleaners decided that

paying $12 an hour was outrageous, so they stepped up their efforts to bring Mexican and Central

American labor markets in the United States". In another study, Malanga (2006) found that 60 percent of immigrant workers in New York restaurants did not receive regular raises, while 70 percent had never been promoted. While some believe that illegal immigrants do the jobs that legal immigrants or citizens will not do, there are instances where that was not the outcome. For example, The Wall Street Journal (2007) reported on the immigration raid of a chicken-processing plant in Stillmore, Georgia. Nearly 75 percent of its mostly Hispanic workforce was lost during the ICE raid. The raid actually presented an opportunity for local unemployed African-Americans. The company increased the average wage from $7 to $9 in order to make up for the loss of its workforce. This example supports the theory that illegal immigrants take jobs away from low-skilled legal immigrants or citizens who are willing to work. The true impact can be measured in some of the results presented by the Westat survey. The E-verify transaction database shows that there are fewer foreign born workers being authorized during the past two years. The percent of foreign born workers authorized to work in the United States decreased from 19.8% in January of 2006 to 14.7% in January 2008. Simultaneously, the percent of U.S. citizens authorized to work in the United States increased from 84.5% to 89.5%. One could conclude that more United States citizens, and fewer foreign-born workers, are now finding employment with employers that utilized the E-verify systems.

Even though there seems to be ample support for the continued use of the E-verify system, some still do not support its effectiveness or ability to solve the issues of illegal immigration. Opponents of the system believe that E-verify has been inefficient, prone to errors and incapable of detecting identity fraud. The E-verify system has relied on the Social Security data base which has a 4 percent margin of error and has mistakenly declared millions of people ineligible for employment. While the system has detected those ineligible for work, E-verify has also affected employees who may have been eligible to work by showing an error in the administrative process (Schoeff, 2008). Often times, employers may not inform the employee of their non-confirmation, therefore leaving the

individual to seek other employment. Others argue that E-verify has been a flawed program that unjustly forces employers to police immigration and leaves businesses open to prosecution and lawsuits. Employers risk discrimination lawsuits for rejecting eligible workers, or they risk investigation by the government for hiring illegal workers.   Some employers have illegally misused the verification program by verifying the employment status of foreign-looking job applicants *before* hiring them and reducing pay or even firing employees who challenge the SSA's findings that they are working illegally (QSR, 2010). E-Verify has not confirmed whether the employee submitting the documents is actually that person. In other words, E-verify cannot tell if the prospective employee was fraudulently submitting someone else's name and valid Social Security number or passport (Speizer, 2008). A new Photo Screening Tool was introduced in 2007 to assist with improving the identification process. This tool requires the employer to verify the consistency of photographs on the identification provided by the employee with the image presented on the USCIS database. Of the 93,866 cases reviewed in the Westat survey, 178 cases were reported as having a discrepancy in the images. But, if the individual borrowed documents belonging to a relative and obtained legal documents by doing so, E-verify cannot detect that situation.

Part of the Westat study addressed the inaccuracy rates of the E-verify system.   From April to June of 2008, Westat reviewed the results for 1.4 million inquiries. In the survey, 5,454 individuals were initially given a non-confirmation and were found to actually be authorized to work in the United States; 3,142 were actual U.S. born citizens. The time to resolve the issue ranged from 7 days with the USCIS to 10 days with the SSA, all adding up to lost wages for the employee. Though the percent of errors was relatively small (0.5%), the study appears to support the claims of several employment groups that have criticized E-verify as being inefficient and particularly vulnerable to identification theft and fraud (Leonard, 2010).

E-Verify and the Hospitality Industry

The hospitality industry has a particular interest on the outcome of the E-verify debate due to the reliance upon immigrant workers. The Westat report found that in 2009, there were an estimated 1.3 million workers in the Leisure and Hospitality industry that were not authorized to work in the United States. That represents 9.9% of the 13.8 million people who were employed by the industry. The only industries with higher numbers were construction (14.1%) and agriculture (13.4%). California has the highest estimated number of unauthorized workers with over 1.8 million unauthorized immigrant employees in the workforce. That is nearly double the nearest state, with Texas having and estimated 925,000 unauthorized workers in the workplace. Based on a percentage of the workforce, Nevada had the highest amount of unauthorized workers at an estimated 12.4% followed by California at 9.8% and Arizona at 9.7% of the estimated workforce.   J.W. Marriott and Chief Executives from InterContinental, Hyatt, Loews and Starwood hotels sent a letter to the Homeland Security Secretary Michael Chertoff stating frustration of the slow progress of overhauling federal immigration laws. The hotel chain employs more than 331,000 people, many whom are foreign-born, and Marriott fears that if Congress fails to act, states and municipalities will instead enact a patchwork of immigration laws (Reilly, 2007). Restaurant association officials cheered when the Department of Homeland Security changed regulation that requires employers to fire workers who were unable to reconcile discrepancies in their Social Security records (Frumkin, 2009). A coalition that includes hoteliers, restaurateurs, farmers, contractors and the Arizona Chamber of Commerce had joined in a federal lawsuit aimed at overturning the law, which they view as unwieldy, unfair and an improper use of state authority to resolve a matter reserved for the federal government (Speizer, 2008.

Costs to the Industry

The costs to the employer for running a quality E-Verify program may be substantial. The Government Accountability Office (2006) estimated that the program for all employers would cost the federal government, employers, and employees about $11.7 billion total per year, with employers bearing most of the costs. While it is anticipated that the on-line version of the program is less costly because there is no dedicated phone line and fewer information technology expenses, such costs are likely to increase as labor is diverted from productive activities to administrative activities. At the time that the Arizona statute was passed mandating E-verify, MCL Enterprises, the largest Burger King franchise in Arizona that owns and operates 25 Burger King Restaurants with 700 employees throughout the State of Arizona, like most Arizona companies, was not using E-Verify. Preparing for the transition to using E-Verify was extremely costly and disruptive to their operations. All of their restaurant managers, assistant managers, and directors of operations had to attend external training. The training cost the company both in the wages that were paid to attend the training sessions and in lost productivity of the employees. In addition to the external training, administrative staff of the company had to take time from their normal duties to review the E-Verify procedures manuals, take the online training, develop a written company policy and then communicate the policies to the employees at the store level. As turnover in managerial and administrative positions occurred, the new employees had to be trained. The person responsible for running E-Verify must contact the restaurant and the restaurant must contact the employee to correct the error. In over fourteen percent of the queries, the initial response is something other than "employment authorized." When the initial response from E-Verify is something other than "employment authorized," there are going to be additional costs to the employer. The process literally starts all over again and the administrative costs and loss of productivity can have a substantial impact on the employer and employee. MCL Enterprises is fortunate to have the staff to

deal with these issues and allow for redundancy and backup. For smaller operations that do not have that luxury, the burdens will be even greater. With Arizona's tough statute, that means that these smaller operations will be exposed to tremendous potential liability despite their best efforts.

The Pew Hispanic Center estimates that the national labor workforce not authorized to work in the United States is between 5.4% and 10.7%. The reason for the variance is that unauthorized workers tend to be more mobile than other workers, mainly due to high turnover in seasonal employment. While the DHS estimates found that 6.7% of the national labor workforce was not authorized to work in the United States, the 10.7% also takes into account laborers who may be paid "off the books" and therefore not accounted into the payroll system. As mentioned previously, each state in the United States maintains varying levels of unauthorized workers. States in the southwest and that border Mexico tend to have a higher percentage of unauthorized workers and it can be concluded that E-verify would have a bigger impact upon further implementation.

Conclusion

E-verify has proven the ability to effectively validate individuals who are eligible to work in the United States. Of the employers surveyed in the Westat study, 92% believe that the system is highly accurate. While some may want to question the accuracy or fairness of the system, the majority of results support the fact that employers can benefit from the long-term implementation of the system. The hospitality industry, especially those in the Southwest region of the United States, found solutions to hiring challenges by employing individuals from other countries. While the previous verification process may have allowed illegal immigrants to be employed with their company, utilizing the E-verify system will assist the companies to be compliant to current standards. If the percentages of the Westat survey are correct, some companies may find that they need to replace as much as 10% of their workforce. While the initial, short-term adjustments may seem costly, ultimately the employer may find

confidence in the belief that every individual employed within the company is legal to do so in the United States.

Recommendations

History has dictated that recruiting and retaining good employees is a challenge in the hospitality industry. Low wages, undesirable responsibilities, long hours and the perception that the industry tends to be transitional employment has created high turnover. Given that the estimated percent of illegal immigrants employed in the industry is between 5.4% and 10.7%, employers should heed to opportunity to improve the verification process sooner rather than later. While E-verify may not become a national mandate in its current context, legislation continues to pinpoint the opportunities and will close the loopholes left open from prior legislation. While the initial change may cause some turnover, the business would ultimately benefit through knowledge that all employees are employed legally.

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