

Immigration Reform Vital to the Green Industry



Source: www.TurfMagazine.com

Editor's note, Turf magazine thanks ANLA and sister publication American Nurseryman magazine for sharing this valuable information for the benefit of landscape contractors that rely upon immigrant workers to provide services to U.S. property owners.

✖ By Craig Regelbrugge

The labor situation in the green industry might be summed up this way: lots of clouds, not much hope for silver linings anytime soon. Though many businesses have trimmed their workforce during the economic downturn, the fact remains that farm, nursery, greenhouse and seasonal employers depend significantly on hired labor that wasn't born here, and has papers that look better than they really are.

So what of the gathering storm clouds? In short:

- . I-9 audits of businesses are happening at a torrid pace, 1,000 at a time. More than a few have hit our industry. While vigilant employers are usually found in compliance, they often have to terminate 25 to 50 or even 70 percent of their workforce, and withstand the chaos that follows.

- . State immigration enforcement laws continue to be debated and passed in places like Georgia and Alabama. They are wreaking economic and human havoc.

- . Congress is debating whether to make the federal E-Verify program mandatory for all employers. A bill to mandate E-Verify just cleared the House Judiciary Committee, and it totally ignored the unique challenges facing farm and seasonal employers.

- . The only legal visa programs for seasonal farm and landscape workers, H-2A and H-2B, are in regulatory tatters. Even experienced H-2A users are

considering abandoning their legal labor lifeline. H-2B program users have turned to the courts to fight arbitrary new wage rules that will bring abrupt wage increases of 40 to 70 percent.

The E-Verify debate

On the legislative front, the safer bet over the past few years has been that nothing (good or bad) will happen. But don't bet the farm or business on it. E-Verify has broad political appeal, and in these anxious times, it is tough for politicians to reject something that most see as holding employers accountable for who they hire. Plus, most of the business community, including the U.S. Chamber of Commerce, has decided to back a federal E-Verify mandate in lieu of a patchwork quilt of state laws.

The agricultural sector is the one vocal holdout that is fighting mandatory E-Verify unless it is combined with a new agricultural worker program. The blunt reality is that upwards of three quarters of the skilled farm workforce could be displaced if E-Verify were mandated, with no replacement workforce in sight. Groups like the Agriculture Coalition for Immigration Reform (ACIR, which ANLA co-chairs) and political champions as diverse as Rep. Dan Lungren (R-CA) and Sen. Dianne Feinstein (D-CA) are fighting for improved legal worker programs as part of an E-Verify bill. For his part, Lungren's Legal Agricultural Workforce Act, H.R.2895, proposes a much more market-oriented visa program approach than H-2A. Feinstein, doubtful that Congress can get much done, may soon introduce a revised emergency five-year pilot she first suggested in 2008.

House Judiciary Chairman Lamar Smith, a fierce opponent of immigration and foreign worker programs over his long career in Congress, has recently done an about-face and is now proposing his own solution, a bill that would reform the existing H-2A temporary and seasonal worker program. Yet, he wants that bill to run on a separate track from E-Verify. ACIR believes that the solution for agriculture must be part of an E-Verify package<0x2014>not on a separate track, which makes passage much riskier.

Also, the National Council of Agricultural Employers recently commissioned an in-depth study of H-2A, which exposed deep flaws in the program. ACIR has concluded that the structure of the H-2A program is too unresponsive and bureaucratic to meet the needs of the agricultural sector in a "mandatory E-Verify world."

E-Verify federal legislation will remain a threat through the year, and possibly well into the next, as the election season heats up. The rhetoric around E-Verify is that it will displace illegal aliens, allowing unemployed Americans to fill the jobs. That hypothesis may be true somewhere in the U.S. economy, but it is certainly not true in agriculture. Rather, mandatory E-Verify will further destabilize agriculture's already tight labor supply, and hasten the off-shoring of production, on-farm and off-farm jobs. These facts were described by several witnesses in a recent Senate subcommittee hearing. The statement of Robert Smith of Farm Credit East, in particular, describes the jobs and economic activity at risk of an immigration enforcement-only strategy. A clearly frustrated Sen. Feinstein stated, "As we

[in Congress] fiddle and dither, farm production leaves America for other countries."

Growing threats in the states

Despite the warnings, politicians in a growing list of states are rolling the dice and taking a gamble that the benefits of a one-sided, enforcement-only approach to immigration reform will pay off, politically or otherwise. Alabama is the latest state to enact such a law. Indeed, Alabama's is seen as the most Draconian law in the country, and yet the courts have allowed most aspects of it to go into force. The farm and hospitality sectors in the state are reeling as workers and families flee. In many cases, fleeing workers have legal status, but perhaps a spouse or child does not.

Next door, in Georgia, researchers analyzing the impact of that state's law estimate that labor shortage-induced crop losses have reached \$140 million. That estimate does not include the ripple effect through communities and community-based businesses from reduced payrolls, reduced spending and reduced taxes.

An audit in your future?

Outside of Congress and state capitals, another threat facing green industry employers is that of an I-9 audit. Such audits are happening at a record pace. While Homeland Security officials claim they are going after "bad employers," the claim is bogus. Rather, they are going after employers of all types, in the hopes of finding bad ones. Auditors appear to be targeting a lot of agricultural, nursery and landscape employers.

For the most part, the audits are damaging and, frankly, cynical. Few employers are found to be in serious violation of the law. Yet, most farm operations that are hit end up having to fire 30 to 70 percent of their workforce. The audited operations scramble to replace lost workers and survive. The workers are not deported. Often, they simply move to the competitor down the street.

Coping until Congress tackles the problem

The situation is not likely to improve markedly until Congress acts to modernize our immigration system. Doing so is in the national interest, both with respect to security and to economic vitality. The problem could be tackled comprehensively, or in stages. If the latter, Congress should pay special attention to the needs that exist at the "high end" and the "low end" of the economy. At the high end, future U.S. global competitiveness hinges to a large extent on whether we can attract the best, brightest and most promising innovators, as we have in the past. At the low end, improved legal visa programs for farm and seasonal workers are needed. We will not be safer or healthier economically if much of our agricultural production leaves the country to go where the willing labor is.

Smart employers should also make sure their own house is in order, in the event of an audit. A compliance webinar featuring one of the nation's most respected immigration and labor law experts, Monte Lake, can be viewed at www.anla.org/i-9webinar.

Now is also a good time to redouble efforts to seek, hire and train any and every willing American worker who might be open to working in the industry. The experience of a nursery employer in the eastern U.S. that recently underwent an I-9 audit illustrates the point. The nursery was forced to terminate 140 skilled and experienced yet falsely documented workers. This very conscientious employer carefully reconsidered how jobs are structured, with an eye toward making as many jobs as possible more attractive and interesting. They have managed to recruit some new American workers to their team, though candidly their experience was that four out of every five applicants proved to be unemployable. (By extension, when the next area employer is audited, the pool of willing and employable labor will be that much smaller). And, there are still some repetitive manual labor jobs that cannot be restructured and have gone unfilled, leaving the nurseryman with the Hobson's choice of again hiring potentially falsely documented immigrant workers, or turning to the badly functioning H-2A program.

Finally, green industry employers must make it their business to educate elected leaders on the need for reform, especially as new enforcement measures like E-Verify advance in Washington or the states. Get involved by supporting an innovative, new campaign known as Save America's Food and Economy (SAFE) www.saveamericasfood.org, which is pushing to ensure that enforcement and reform happen together. Or, visit www.capwiz.com/anla/home, where you can customize a message and write your lawmakers on this vital issue. Schedule a visit with your Representatives and Senators when they are home. Invite them to tour your business. If you don't take the time to education them, who else will?

About the author: Craig Regelbrugge is vice president for government relations and research for the American Nursery & Landscape Association in Washington, D.C., where he keeps a keen eye on Capitol Hill. He also serves as co-chair of ACIR, the Agriculture Coalition for Immigration Reform. He can be reached at cregelbrugge@anla.org.