

# Update on Undocumented Workers

Perspectives on potential changes in policy and enforcement

*“Immigration and Customs Enforcement, part of the Department of Homeland Security, says it plans to target employers, just as it did under President Barack Obama. – Alexia Elejalde-Ruiz, **Chicago Tribune**, March 9, 2017*”

## A Shifting Situation

Workplace audits for undocumented workers peaked in 2013 at over 3K inspections, before nearly halving in 2014-2016, according to the *San Diego Union Tribune* on February 17, 2017. **Now, inspections may be on the rise again.** The article by Kate Morissey points out that Attorney General Sessions and President Trump have previously aligned policy decisions with the advice of The Center for Immigration Studies, which is calling for renewed enforcement at workplaces.

### Defining Undocumented Workers



Foreign born, not a permanent resident, not a U.S. citizen.



Lack legal documentation to work in the U.S.



May have overstayed a visa, avoided border inspection, or used counterfeit documents.

**This may already be happening.** *The Washington Post* reported on February 10, 2017 that “Immigration officials

confirmed that agents this week raided homes and workplaces in Atlanta, Chicago, New York, the Los Angeles area, North Carolina and South Carolina, netting hundreds of people.” Increased activity by Immigration and Customs Enforcement (ICE) has been reported in Alabama, Texas, and California as well. *AL.com*, a part of the Alabama Media Group, ran a story in March headlined: “ICE raids have ‘blown up’ in Alabama since Trump immigration orders went into effect.”

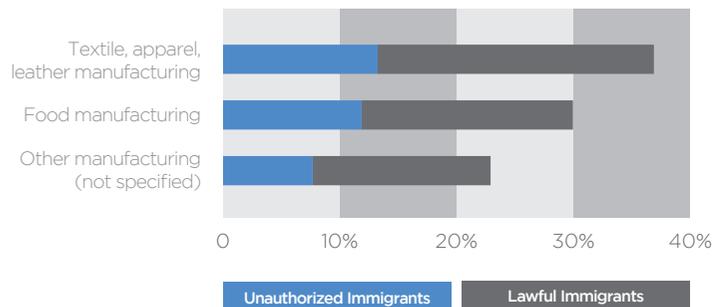
**Further, using E-Verify could become mandatory for all employers,** as the current Congress will likely be more receptive to such legislation, according Kathryn Watson’s January 1, 2017 article in *The Daily Caller*. E-Verify is a free federal program which allows employers to check the status of potential workers against federal databases. Participation has been voluntary for most employers; mandatory only for a few, such as federal contractors and some states’ agencies.

## Why the Undocumented Are Hired

Undocumented workers are among job searchers and employees of many industries. Identifying them creates a burden on companies. Many businesses do not use E-Verify, and most do not have the know-how to identify false documentation, for which there is an active market.

Some businesses have lax practices for checking identification, especially for hard-to-fill jobs and temporary work. They may overlook missing or questionable documents to avoid missing out on economic opportunities.

### Employed Immigrants: by Industry and Work Status



(Adapted from Pew Research Center, March 2017)

Low enforcement has emboldened employers. Past administrations have encountered public backlash in response to increased enforcement and workplace raids, causing them to back down, according to Monica Campbell's piece in *Public Radio International*, on April 18, 2017. Immigration law experts interviewed felt that employment practices and numbers of undocumented workers have been little affected by temporary surges in enforcement.

**Finally, there is ongoing debate about the pros and cons of undocumented workers.** In 2010, those with fake documents contributed \$12 billion to Social Security according to the chief actuary of the Social Security Administration, said Alexia Fernández Campbell, September 12, 2016, in *The Atlantic*. A study by economists at Queens College CUNY found that "the economic contribution of unauthorized workers to the U.S. economy is substantial, at approximately 3% of private-sector GDP annually, which amounts to close to \$5 trillion over a 10-year period," as cited by CBS *MoneyWatch* in November, 2016. With no consensus that undocumented workers negatively affect citizens or the economy, employers may feel little imperative to discern employees' or applicants' status.

**Unauthorized Immigrants – Fast Facts**

**11** million in the U.S. in 2015

**59%** are in six states: CA, TX, FL, NY, NJ, and IL

**5%** of those working or looking for work are unauthorized

(Pew Research Center, April 2017)

### Business Impacts

Regardless of why undocumented workers are hired, the law is clear. Companies are required to verify the identity and employment authorization of employees, and retain completed copies of Form I-9 (Employment Eligibility Verification). Requirements or their enforcement may be in flux, but current fines and penalties are known.

Fines and penalties for immigration-related employment violations vary by the nature of and number of violations, according to U.S. Citizenship and Immigration Services. However, consider the concrete costs of fines for having knowingly hired, recruited, or retained an unauthorized alien:

First Offense (maximum fine)	Second Offense (maximum fine)	Third or Subsequent Offense (maximum fine)
\$4,313	\$10,781	\$21,561

Business impacts of more vigilant enforcement could include training of HR or other employees, time spent verifying authorization, and delays in hiring resulting in lost productivity.

### Business Response

The *New York Times'* Editorial Board opined on March 20, 2017 that illegal immigration is largely the fault of employers, due to the draw of economic opportunity for undocumented workers. At the same time, they point out that change in enforcement and policy is politically difficult because of push-back by powerful industries who rely on such workers. They advise both paths to citizenship and increased enforcement. This epitomizes the complexity of the issues, and uncertainty about policy and enforcement outcomes.

**New legislation or enforcement actions will certainly shape HR practices in warehousing, logistics, and light manufacturing.** Employers must keep their ear to the ground to assess how shifts will affect their internal hiring procedures. Companies seeking decreased HR hassle and increased security may opt to outsource their hiring. Select uses E-Verify and assures their contingency staff Associates are in full compliance with immigration law.

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