

New rules could make it harder to hire foreign workers

By Laura Layden

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Hiring foreigners is about to get even tougher for local businesses.

New rules that take effect Monday will make it more expensive and more time-consuming for companies to hire immigrants for permanent jobs that can't be filled in the U.S.

While Congress has stalled on immigration reform, the Department of Labor is changing its regulations to try to reduce fraud and abuse in a program that allows businesses to sponsor foreign workers and help them get green cards to live and work in the U.S.

The new rules will affect all types of businesses in Southwest Florida, from hotels to high-tech companies.

"There is no industry in Southwest Florida that doesn't require foreign workers. None, period. We are short of workers and frankly the employers don't care whether they come from Michigan or Brazil. They just need workers," said Casey Wolff, an immigration attorney with Paulich, Slack & Wolff in Naples.

With the new regulations, foreigners may find fewer opportunities for employment.

"I think in Southwest Florida and around the country employers that have been willing to sponsor somebody for this permanent employment are going to be more reluctant," said Otto Immel, a partner in Quarles & Brady's labor and employment practice group in Naples.

The new regulations won't affect students, migrant farmworkers or others who come to this country only for seasonal, or temporary work, such as internships.

The American Immigration Law Foundation, which promotes fairness for immigrants and their employers, is considering filing a lawsuit against the Department of Labor over the new regulations. A spokesman for the Department of Labor was unavailable for comment Friday.

One of the biggest changes is that employers now must pay 100 percent of the expenses associated with the permanent labor certification, including attorney fees and recruitment costs.

The certification process is the first step for most applying for a green card. If the employer's petition is approved, then the immigrant waits for a visa number to be available. The last step is for the worker to apply for permanent resident status.

In the certification process, a business must show there is not a U.S. worker to fill the job. Often, advertising is required.

With costs ranging from \$5,000 to \$10,000 per employee for certification, it's a lot for companies to bear on their own, especially when there's no guarantee the worker will stay after getting permanent residency, Immel said.

"People when they get their permanent work authorization in the U.S. can work for anyone," he said.

In the past, businesses might have shared certification costs with workers, or might have required workers to pay back those costs if they didn't keep the job at least six months. That can't happen anymore.

"The change shifts the risk totally to the employer," Wolff said. "It does not allow the employee to take on any of the risk and that discourages job growth. There is no doubt. It is about as negative of an effect that I've seen and I've been doing this for 30 years."

It's now illegal to use a labor certification for anyone other than the worker named in an application. Before employers could substitute another worker if the one named in the application walked away.

"This is a big change. In terms of substitutions of people, that has been in place for more than 10 years. It's always been the case," said Karen Caco, senior counsel for International Immigration Services on Fifth Avenue South in downtown Naples.

Now if one foreigner doesn't work out, the business is back to square one in the certification process. A new application has to be filed for a different worker.

"It's just like you never did the first one. The first one goes poof and expires," Immel said.

Because the application can take a year or longer, some workers won't be there at the end. A company that files 30 applications for certifications may end up with only 20 workers, though it's paid for 10 more.

Other changes taking effect today include:

- Certified applications will be good for only 180 days. Before they had no expiration.
- Certified or pending applications can't be sold, bartered or purchased. If an application is transferred to someone else, the Department of Labor can revoke it and ban the employer from filing others in the future.
- Employers, attorneys and agents who engage in fraud or provide false information may be barred from filing new applications.

The Department of Labor is cracking down on certifications because there has been so much fraud and abuse. The ability to substitute workers in the applications has turned them into hot commodities that could be sold for big money by unscrupulous employers, attorneys and agents. That led to criminal prosecutions by the Department of Justice.

The fact that the certifications didn't have an expiration date didn't help, department officials say.

Foreign nationals without required skills were obtaining the certificates with no plans to take the sponsored jobs.

In one case, a consultant was getting the names of managers at restaurants and other businesses and filing applications under their names without their knowledge, Caco said. He was then selling the certifications to foreigners for as much as \$150,000 apiece, she said.

Some think the new regulations are extreme. They punish the good guys, Wolff said.

"I think it's an overreaction and this office has been so tight on the rules we don't even squeak," he said. "Frankly, this is another indication of the incompetence of Washington to solve a much larger problem."

"This is a Band-Aid and somebody cut an artery," he said. "God, we've got to do something."

Immel describes the new rules as heavy-handed. He said those who want to abuse the system will still find a way.

"This is completely to the disadvantage of all the businesses that are trying to follow the rules and all the immigrants that are trying to do the right thing," he said.

Locally, some businesses will be hurt more than others.

Many resorts, such as the Naples Beach Hotel and Golf Club, The Ritz-Carlton, Naples, and the Hyatt Regency Coconut Point Golf & Spa Resort in Estero only bring in foreign workers under temporary visas so their managers aren't concerned. Area growers also rely mostly on seasonal workers to pick their crops so they don't have to worry.

The NCH Healthcare System, the largest hospital operator in Collier County, expects to see its costs rise because of the new rules for obtaining permanent foreign workers.

"It may take longer. It may be more expensive down the road. There may be some different hoops you need to jump through. Some of it is necessary. Some of it may not be necessary," said Brian Settle, NCH's human resource director.

The company will continue to bring in foreign workers even if it costs more because it wants to provide the highest quality health care in the region, he said.

In the past, he said, NCH has shared the cost of certification with employees.

More frustrating than the new rules, he said, are the limits on visas. There just aren't enough to go around.

Recently, NCH interviewed a nurse from another country who it wants to hire. She was in town visiting a friend. But all of the employment-based immigrant visas have been handed out for the year. They ran out in July and won't be available again until the start of the next fiscal year.

"They've hired her contingent on getting the green card and we can't get the green card because there are no numbers available," said Caco, who represents the nurse. "So she has to wait until Oct. 1."

The situation is troubling, as U.S. employers don't have to prove the need for nurses because there's such a critical shortage and nurses aren't supposed to have to wait to apply for permanent resident status, she said.

This year, 140,000 employment-based permanent immigrant visas were available through U.S. Citizenship and Immigration Services.

In mid-June, the State Department announced there was no waiting period to file for employment-based green cards. That spurred many foreigners to prepare applications, but the department on July 2 rescinded its notice and said it wouldn't allow any more green card filings for the year. The decision meant no one could file for a green card for three months, which has never happened before.

Even professionals who are considered "extraordinary," such as professors and CEOs, can't get a green card now.

"It's a huge issue. Can you imagine being in a country and being so excited because you have a job and want to start working. But you can't. You have to wait," Caco said.

She's worked with another local employer that hoped to bring in a substitute worker after its original applicant decided he was no longer interested in the job he was offered. That won't be possible now.

"It's a terrible situation," she said.

NCH has recruited another dozen or so registered nurses from the United Kingdom, but they're also caught up in the certification process because there aren't enough immigrant visas this year, Settle said.

Mac Chaudry, general manager of the Hilton Marco Island Beach Resort, said his hotel hires mostly temporary workers from foreign countries, and many come on H-2B visas. They work from October to July.

He said he has one employee, a chef, who is here from India on a three-year visa for technical workers and wants to get a green card so he can continue working in the U.S. The hotel has sponsored him, but his application is on hold because the quota has been met for the year, Chaudry said.

“It’s kind of making it a little bit tough,” he said. “We are hoping that in October he will get his paperwork processed and he will get a green card.”

Luckily, the chef has two more years left on his current visa, Chaudry said.

WilsonMiller Inc., a Naples-based planning, design and engineering firm, has only sponsored foreign employees a few times, said Steve Csotty, the company’s human resources director. So it won’t notice much of a difference.

“We don’t normally recruit outside the U.S.,” Csotty said.

Kristy Rigot, director for human resources at Lee Memorial Health System, one of Lee County’s major employers, said the company sponsors foreigners to fill critical positions for registered nurses, medical technologists and pharmacists. But there’s no big concern about the new rules.

“We’ve paid for them anyway and we haven’t done any substitutions,” Rigot said. “So for us it’s just kind of business as usual.”

There are more changes coming. In August, the rates for filing for adjustment of status will rise. The cost will go from \$325 to \$930.

Some see the rising fees as yet another way to discourage immigrants from coming to the U.S.

Staff writer Katy Bishop contributed to this story.

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