

The proactive approach

Retailers can take a cue from Wal-Mart's immigrant labor legal troubles.

By Mark Ivener

Supermarket executives who closely watch Wal-Mart for competitive reasons should also have their eyes trained on the massive retailer's recent landmark deal to pay fines of \$11 million in a case involving the employment of illegal aliens by independent contractors of Wal-Mart.

What also warrants attention is the retailer's agreement to stop procedures that result in the hiring of undocumented workers. In addition, Wal-Mart has committed to ensuring its contractors' compliance with immigration laws, and to training its managers in legal hiring practices.

Food retailers are no doubt familiar with the first provision of the Immigration Reform and Control Act of 1986, which specifically prohibits the hiring, recruitment, or referral of a person not authorized to work legally in the United States. The Wal-Mart settlement brought to employers' attention a much less well-known provision—Provision Four, which details the use of labor through contractors, subcontractors, or exchanges.

Grocers are accountable

U.S. Immigration and Customs Enforcement (ICE) rejected Wal-Mart's claim to innocence based on the illegal aliens' being employees of the independent contractors. ICE's position was that in this case, corporate responsibility could not be passed on. It's clear that ICE intends to use this case as a precedent, not just for large-scale corporations, but also for smaller operations. In fact, any company hiring illegal aliens, whether directly or indirectly, will be subject to investigation and full prosecution for violating immigration laws.

Wal-Mart was directed to develop a method that will enable it to verify that the independent contractors it deals with have complied with immigration laws pertaining to employment. Contrary to ICE's traditional position—that independent contractor agreements assume a level of distance and minimal connection between an employer and the independent contractors—ICE is making it clear now that the employer can be held accountable for its contractors' hiring practices.

What does this noteworthy case mean for supermarket management whose stores use independent contractors? Quite simply, you must now be exceedingly mindful of immigration employment regulations, whether you're directly or indirectly hiring the workers in question. With the Wal-Mart case serving as a precedent, ICE is affirming that the government is no longer putting immigration enforcement on the back burner.

Retailers, however, need to know that their respective houses are in full legal order prior to verifying their contractors' practices. Establishing or enforcing operationwide policies and procedures concerning the authorization and verification of employment should become a priority. Those store managers and supervisors

who have the most significant day-to-day interactions with employees must be trained in the practices and processes involved, including the completion of I-9s (the Employment Eligibility Verification Form).

The hiring of foreign nationals should comply with the guidelines set by U.S. Citizenship and Immigration Services (USCIS), with petitions filed well in advance of the engagement of the alien worker. Supermarket companies should also re-verify the employment status of current employees as neces-

legally need to review the documentation to verify compliance. However, working with an attorney, you can contractually require independent contractors to furnish you with copies of I-9s and other documentation for the workers you bring on-site.

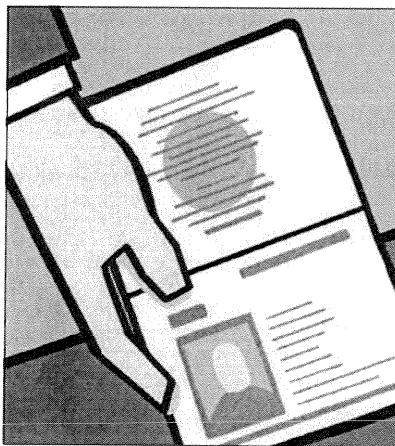
Precautionary measures

At a bare minimum, check with your attorney to make sure your company's independent contractor agreements include terms stating that the contractor will comply with all measures regarding immigration regulations, the verification of I-9s among them, and that the contractor will recompense your company should any liability charges arise out of noncompliance issues.

The federal government's message to Wal-Mart is also being sent to all supermarket management nationwide: ICE will focus on and enforce federal immigration statutes. Claims of ignorance don't preclude liability; civil and criminal prosecution will assuredly result if employers hire contractors that employ illegal immigrants.

Those at the supermarket helm must take a proactive approach and implement an internal system incorporating immigration law controls and audits. This way you can minimize your risk of federal violations, and thereby avoid a Wal-Mart-type investigation of your own enterprise.

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sary, using extended work authorizations. Finally, a system of regular audits of company I-9 practices is also essential to ensure that the organization is in continual compliance with all federal immigration laws.

When it comes to contractors' records, you, as the employer, don't