



HRHero.com

ARIZONA

EMPLOYMENT LAW LETTER

Part of your Arizona Employment Law Service

Dinita L. James, Editor — Gonzalez Saggio & Harlan LLP

October 2013

IMMIGRATION

Car wash case puts shine on new ICE strategy

by Dinita L. James

In April 2009, U.S. Immigration and Customs Enforcement (ICE) rolled out a revised worksite enforcement strategy. It was a major departure from earlier strategies involving rounding up undocumented workers in favor of criminal prosecutions of employers. A recent Phoenix case gave ICE a chance to scrub up its investigatory tactics and put a shine on the new strategy.

First came the audit

At the height of its success in the mid-2000s, Danny's Family Companies was a Scottsdale group of car washes, restaurants, gas stations, and convenience stores. A former Detroit police officer, Daniel (Danny) Herndon started with a single car wash in the early 1980s, which grew to more than 20 locations, with plans to expand to nearly 30 more. Some of the locations had upscale amenities, such as handmade pizzas and fine wines. At the companies' peak, they provided jobs to more than 1,000 employees. The Great Recession took a toll on the business, which filed for bankruptcy protection in March 2010.

In early 2011, ICE audited the Danny's family of companies and found that about half of their workforce were aliens not authorized to work in the United States. In response, the companies discharged 900 unauthorized workers in April 2011.

Knowing-rehire crimes

After a two-year investigation, on Saturday, August 17, 2013, federal agents descended on the remaining 13 Danny's car wash locations, serving search warrants and arresting managers. More than 200 undocumented workers also were taken into custody. ICE released 179 of them the same day after questioning. Approximately 30 other workers swept up in the raids were kept in custody for prior criminal histories or prior deportation and illegal reentry.

A 78-count indictment asserts criminal charges against managers and supervisors as well as the 18 corporate entities that make up the Danny's family of companies. The indictment shows the kind of crimes federal prosecutors can charge in such cases. The primary facts claimed by federal authorities are that Danny's managers and supervisors began rehiring some of the same people they had to fire in April 2011 to resolve the audit. Prosecutors claim to have evidence that location managers—as well as members of upper management—affirmatively assisted these unauthorized aliens in obtaining new identities and counterfeit identification documents and then falsely certified I-9 forms.

The indictment claims that in one case, a manager took a photo to be used in creating a forged identification document to rehire one of the unauthorized workers disclosed during the audit. Several of the managers are alleged to have provided false identities directly to some of the former workers.

For this alleged conduct, the corporate entities and the 14 managers and supervisors stand accused of engaging in a pattern and practice of knowingly employing unauthorized aliens, conspiracy, aggravated identity theft, identity theft, immigration document fraud, and false statements on I-9 forms. The 78 counts are asserted against all of the corporate entities and all of the managers and supervisors because the conspiracy makes each of them potentially liable for all of the criminal wrongdoing of the others.

Herndon wasn't charged, but the indictment seeks forfeiture of the real and personal property owned by his companies.

Warning delivered

The dramatic raids of the car wash locations at peak Saturday business hours appeared calculated to send a strong message that federal authorities will hold businesses accountable for knowingly hiring workers

Gonzalez Saggio & Harlan LLP and Gallagher & Kennedy, P.A., are members of the *Employers Counsel Network*



without legal authorization. That fits right in with ICE's strategy turn in 2009, which aimed criminal prosecution against employers that:

- Use unauthorized workers as a business model;
- Mistreat their workers;
- Engage in human smuggling and trafficking;
- Engage in identity and benefit fraud;
- Launder money; and
- Participate in other criminal conduct.

Bottom line

The Danny's companies, managers, and supervisors will get a chance to defend themselves at trial.

Reputable, honest employers aren't at risk of the kind of trouble the Danny's companies and management are facing.

Nevertheless, the case is a good reminder of how important it is to correctly perform the tasks required of employers in ensuring their workers lawfully can work. Those I-9s must be certified, and the person doing the certification faces criminal liability if it is false. While I-9 certifications may feel like routine tasks, they are duties that should be taken quite seriously.

Dinita L. James, the partner in charge of the Phoenix office of Gonzalez Saggio & Harlan LLP, is the editor of Arizona Employment Law Letter. You can reach her at dinita_james@gshllp.com or 602-840-3301. ♣