

# SELECTED REFERENCES

INDUSTRIAL RELATIONS SECTION

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## EMPLOYMENT ASPECTS OF THE NEW IMMIGRATION LAW\*\*

Anderson, Annelise. *Illegal aliens and employer sanctions: solving the wrong problem*. Stanford, CA 94305. Hoover Institution Press, Stanford University. 1986. 27 pp. On request.

This paper was written before the final form of the Immigration Reform and Control Act had actually been enacted into law. The author looks at the main points of the legislation focusing specifically on the employer sanctions provisions and finds the proposed law to be unnecessary and ill-advised. Anderson begins her argument by challenging the idea that illegal immigration really is a serious problem which needs to be solved. By comparing estimates of the flow of undocumented workers into the United States over time, she asserts that unauthorized entry into the U.S. is no more troublesome or disruptive than it was earlier in our history and that legislators and the media reacted to a perceived problem with anti-alien hysteria that was totally unwarranted. In attacking the sanctions provisions, she cites the difficulties of positively identifying illegal workers and maintaining the employment records necessary for enforcement; further, she maintains that employees are likely to respond by discriminating against ethnic minorities.

Bendremmer, Fredric J. and Lisa A. Heiden. "The unfair immigration-related employment practices provision: a modicum of protection against national origin and citizen status discrimination." *University of Miami Law Review* (University of Miami, School of Law, Coral Gables, FL 33124), May 1987. pp. 1025-1055.

Some of the strongest objections to the employer sanctions provisions of Simpson-Rodino have come from civil rights advocates who see them as a trigger for increased employment discrimination against Hispanics and other minorities. In response, the antidiscrimination provisions were added to the law as it made its way through committee. Bendremmer and Heiden trace the legislative history of this part of the law, detail the provisions as enacted, discuss the overlap of IRCA's antidiscrimination clause with existing civil rights legislation, and try to determine what standard of proof is required by the new rules. The footnotes are dense but very useful in pointing to other documentation and research on the new law's effects.

*Enforcement officer's immigration reform reference guide*. Washington, DC 20536. U.S. Immigration and Naturalization Service (425 I St., N.W.). 1987. On request.

This volume serves as a reference guide to the Immigration Reform and Control Act of 1986. It is especially helpful in that it contains short descriptions of the Act's most pertinent provisions. Included are those relating to improvement of enforcement, legalization procedures, temporary agricul-

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\*\* Items on this list should be ordered directly from the publisher. Addresses are given in connection with each reference.

tural workers, and definitions of state and Federal roles in the immigration process. Also included are a subject index to the Act, the complete text of the Act, and pertinent recent amendments.

*Handbook for employers: instructions for completing form I-9.* Washington, DC 20536. U.S. Immigration and Naturalization Service (425 I St., N.W.). 1987. 17 pp. On request.

In introducing the new law, the INS has tried to encourage employer compliance by issuing clear and detailed information. This booklet includes more than just instructions for filling out and retaining form I-9. The INS provides an explanation of the provisions of the new law as it relates to employers, a question and answer section, photographs of sample identification cards which the INS has deemed acceptable proof of legal status, and a list of INS offices to contact for further information along with a toll-free number.

Hill, John K. and James E. Pearce. "Enforcing sanctions against employers of illegal aliens." *Economic Review, Federal Reserve Bank of Dallas* (Federal Reserve Bank of Dallas, Station K, Dallas, TX 75222), May 1987. pp. 1-13.

Hill and Pearce have constructed an economic model of the likely effects of the employer sanctions imposed by the Immigration Reform and Control Act. Their model integrates such factors as probable INS enforcement and its expected results, levels of employer compliance, and likely labor market effects, and predicts "that sanctions will reduce the employment of illegals by 15-25 percent." In their effort to assess the impact of the new law the authors have distilled data from the 1980 census that give a clear statistical picture of the undocumented workforce.

*Immigration law and procedure reporter.* New York, NY 10001. Matthew Bender & Co. (11 Penn Plaza). 1985-. Loose-leaf. \$400.00 (set & updating service for 1 year).

This 3 volume loose-leaf service includes detailed information on administrative and court decisions, updated statutes and regulations, forms, proposed rules, and internal regulatory material generated by the INS. The "Bulletin" section digests current developments in the application of immigration law. Because it is updated regularly, it is a good source for up-to-the-minute information on how the INS is implementing and enforcing the new law.

Kirk, Robin. "Deep roots split in the Central Valley: how IRCA has farmers and farmworkers on edge." *California Tomorrow* (California Tomorrow, Fort Mason Center, Building B, San Francisco, CA 94123), Summer 1987. pp. 13-18.

By focusing on the stories of one farmer and one farmworker in California's Central Valley, Kirk profiles the web of problems the Immigration Reform and Control Act of 1986 has generated for people working in agriculture. The farmer reports increased difficulty in finding and retaining willing workers and frustration with the complexities of the new law. The farmworker talks about the threat of new and complicated rules which may make it even more difficult to live and work in the United States and to keep her family together in spite of the possibility of legalization. Both cite the irony of not being able to employ people who want to work.

Martin, David A. *Major issues in immigration law.* Washington, DC 20005. Federal Judicial Center (1520 H St., N.W.). 1987. 147 pp. On request.

This comprehensive report discusses the current status and major issues surrounding immigration law. Clearly explained is the basic process of immigration and its surrounding administrative structure. Specific subjects treated are: admission categories, grounds for exclusion and deportation, relief from deportation, political asylum and judicial review. Also included are an overview of the 1986 reforms and a comprehensive annotated bibliography of general works on immigration into the United States.

Matlack, Carol. "Working around a law." *National Journal* (National Journal Inc., 1730 M St., N.W., Washington, DC 20036), July 11, 1987. pp. 1776-1781.

Southern California is home to over one third of the illegal aliens in the United States and to many of the businesses which rely on the cheap labor they provide. Matlack reports on some of the early effects of the new law and how employers and undocumented workers are coping with it in California and other parts of the country. There have already been some reports of labor shortages in the garment, farm, and food service industries, although it is very difficult to tell if this pattern will persist once more is known about enforcement levels and the impact of the legalization program. A side bar titled "Going Overboard" chronicles some of the excesses of ill-informed, over-zealous employers who needlessly fired or harassed suspected illegals before the INS had fully formulated its new rules. Most unions, public interest, and industry groups are taking a cautious attitude, but are watching closely for abuses and adverse impact on the groups they represent.

"Reexamining the constitutionality of INS workplace raids after the Immigration Reform and Control Act of 1986." *Harvard Law Review* (Harvard Law Review Association, Gannett House, Cambridge, MA 02138), June 1987. pp. 1979-2000. \$8.00.

One question raised by the new immigration law is how the INS will enforce the employer sanctions provision. Workplace raids have been used to apprehend illegal aliens. This has been done either with the employer's consent or via a warrant. The requirements for the INS to obtain such a warrant are much less stringent than those required for other law enforcement agencies. This is partly due to the fact that, until now, no criminal penalties could be imposed on employers. Employers may not have been eager to have the INS visit under the old law because of the disruption of their workforce. However, the new law makes an INS raid even more unappealing. These raids may now potentially discover employer violations. Because of the enactment of criminal penalties the author argues that "the Act . . . requires that courts reexamine the constitutionality of workplace raids" and goes on to examine the legal precedents that may become important in determining what the INS will and will not be allowed to do in enforcing the employer sanction provisions.

Roberts, Maurice A. and Stephen Yale-Loehr. *Understanding the 1986 Immigration Law*. Washington, DC 20036. Federal Publications Inc. (1120 Twentieth St., N.W.). 1987. various pagings. \$30.00.

This is a practical guide to the Simpson-Rodino law. The first two sections of the book, "Employer Sanctions" and "Antidiscrimination" detail the employment provisions of the new law and how to comply with it as well as commenting on how the law is likely to be enforced. Roberts and Yale-Loehr have arranged the sections topically to enable readers to look up specific points without having to wade through dense legal narrative. The Bureau of National Affairs (1231 25th St., NW, Washington, DC 20037) has also published a special report which provides an overview of the broad

range of issues raised by the law. It is entitled *Immigration reform: a practical guide* (1987, 176 pp. \$60.00).

Ross, Matthew D. "Simpson-Rodino: the new act may have more impact as employment law than as immigration reform." *California Lawyer* (State Bar of California, 555 Franklin St., San Francisco, CA 94102), April 1987. pp. 51-54 +.

Employment law is complicated enough without new immigration regulations being woven into it. Ross details some of the employment provisions of the law and outlines the procedural remedy for violations of the antidiscrimination rule. By comparing elements of established employment law with similar or overlapping elements of Simpson-Rodino he illuminates probable areas of litigation.

Skrentny, Roger. "Immigration reform—what cost to business?" *Personnel Journal* (A. C. Croft, Inc., 245 Fischer Ave., B-2, Costa Mesa, CA 92526), October 1987. pp. 53-60. \$3.00.

The Small Business Administration estimates that the new immigration law will cost employers \$675 million annually. Although this figure is disputed by the INS, it is clear that the financial impact will be significant. Skrentny goes on to detail how these costs break down for employers. This estimate does not include the effect of the fines and litigation costs that are likely to follow the June 1, 1988 date the INS has set for actually enforcing the full penalties set forth in the law. The author reports that the U.S. General Accounting Office has designed a 39 question survey that will be mailed to randomly selected employers to help track the impact of the new law. This will be a potential source of data for those interested in following the effect of employer sanctions.

Tulacz, Gary. *Focus: how to comply with the tough new immigration law*. Old Tappan, NJ 07675. Prentice-Hall Information Services. (200 Old Tappan Rd.). 1987. 57 pp. \$5.00.

This is an outline of the Immigration Reform and Control Act as it applies to employers. Besides including the necessary information on employer sanctions and the antidiscrimination rules the booklet provides two checklists, one of key dates employers must keep in mind and another of the Act's requirements. Notably, Tulacz also provides a brief section on temporary agricultural workers and how the new law has changed the rules for obtaining temporary work visas for non-immigrant aliens needed for seasonal work.

Tysse, G. John. *The 1986 Immigration Act: a handbook on employer sanctions and nondiscrimination requirements*. Washington, DC 20005. National Foundation for the Study of Equal Employment Policy (1105 Fifteenth St., N.W., Suite 1220). 1987. 137 pp. \$15.00, paper.

This handbook provides information about employment provisions of the Immigration Reform and Control Act of 1986. It focuses in depth on two provisions of the law: the system of procedures and penalties prohibiting the hiring of illegal workers and the provision prohibiting employers from discriminating against job applicants because of their national origin or citizenship status. The handbook also provides a summary of the employment-related aspects of the "legalization" provision that permits illegal aliens who have lived in the United States since January 1982 to establish legal residence. This handbook does not go beyond employment matters into other aspects of the law.