

FCA'S TOP LEGISLATIVE AND REGULATORY ISSUES

IMMIGRATION UPDATE



Immigration Bills Introduced in Both Houses—immigration legislation has been introduced, which essentially establishes stronger border security, sets up penalties for employers who violate their provisions, enables about 12 million illegal aliens to remain in the country and eventually become legalized citizens, creates a “guest worker” program for future workers (200,000 guest workers/year), and sets up an employer electronic verification system. Various factions have formed which do not favor portions of these bills. Several Members of Congress see the bills as simply granting “amnesty” to the illegal aliens currently working in the U.S., unless they are required to adhere to a “touchback provision” (i.e., return to their home countries and reenter through a port of entry). The business community wants to ensure that any employer electronic verification system is easy to operate, not costly to implement, and includes a “safe harbor” provision when used. And the labor community is opposed to any temporary guest worker program because it feels the legislation provides insufficient protection for U.S. and immigrant workers.

LEGISLATIVE BILLS/ACTIONS

S.1348: Comprehensive Immigration Reform Act of 2007 (Sen. Harry Reid [D-NV])—would provide for comprehensive immigration reform. **S.AMDT.1150 (Sen. Reid for Sen. Kennedy [D-MA], Sen. Specter [R-PA], and himself)**—a bipartisan amendment introduced as a substitute for Sen. Reid’s original bill; it in effect changes the language of S.1348. **Status:** Under consideration with numerous other amendments.

H.R.1645: Security through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007 (Rep. Luis Gutierrez [D-IL])—would provide for comprehensive immigration reform. **Status:** Referred to the House Judiciary and Homeland Security Committees.

IUPAT's POSITION

The IUPAT opposes the Senate’s legislation (S.AMDT.1150/S.1348), particularly its creation of a guest worker program and its method of wage calculation which they argue doesn't provide a credible wage floor protection for these workers. The IUPAT believes the exploitation of immigrant workers in this country would escalate and the wages and living standards for American construction workers could be driven down. Therefore, the IUPAT has asked its members to contact their Senators and state their opposition to the pending legislation.

The IUPAT has produced the following “Summary of the Facts” about this pending legislation:

Legalization of Illegal Aliens—*illegal immigrants would immediately receive a probationary visa to allow them to work. Six months after the bill’s enactment, all illegal immigrants who arrived before January 1, 2007, would have one year to come forward, submit an application, be fingerprinted, and undergo a background check. If they pass the background check, they would be eligible for a “Z visa” for a fee of \$5,000 which could be paid in installments and cover an entire family.*

Re-Structuring “Green Card” Provision—*the estimated 4 million families in the immigration backlog before May 2005 would be addressed immediately and then processed within eight years. The objective is to distribute 1.1 million family-based and 140,000 merit-based visas to clear this backlog. After the backlog is cleared, there would be about 550,000 family-based visas and 380,000 merit-based visas issued annually, which would then be subjected to a point system. That system would consist of 100 total points, with half coming from employment criteria and the remaining accumulating from education level, English proficiency, and family connections in the U.S.*

Temporary Guest Workers/Temporary Guest Worker Wage Calculation—the bill would establish a guest worker program for future immigrants, granting “Y visas” divided into three categories: non-seasonal (Y-1), seasonal (Y-2a and Y-2b), and spouses/minor children (Y-3). Should temporary guest workers be employed on construction jobs paying wages in accordance with a CBA, the Davis-Bacon Act, or the Service Contract Act, they are to receive those calculated wages. However, should temporary guest workers be employed on a construction project where none of the above applies, the wage calculation will be based upon published wage data from the Bureau of Labor Statistics (BLS), including the Occupational Employment Statistics Survey which historically has diluted actual local wage rates. If the BLS does not have applicable data, then the employer can set wage rates on data approved by the state workforce development agency, under regulations promulgated by the DOL. (NOTE: The Senate narrowly defeated Sen. Byron Dorgan’s [D-ND] amendment to sunset the temporary worker program after a five-year period; however, the Senate adopted an amendment, introduced by Sen. Jeff Bingaman [D-NM], that would reduce the number of Y visas granted to incoming guest workers per year from 400,000 to 200,000.)

Border Security and Interior Enforcement—the Secretary of Homeland Security would have to certify that certain border security “triggers” are met before the Y guest worker or Z visa programs could begin. Among the triggers are the hiring of 18,000 new U.S. Border Patrol agents, construction of 200 miles of vehicle barriers and 370 miles of fencing, the cessation of “catch and release” policies that quickly turn detained illegal immigrants free, and the implementation of “secure and effective” identification tools to prevent employers from hiring illegal workers.

Employment Verification System—employers would be required to electronically verify the legal status of all new hires within 18 months of enactment or on the date the Secretary of Homeland Security certifies that the identification system is operational. Employers would have to verify the status of all current employees within three years of the bill’s enactment. The proposed verification system would be an enhanced version of a voluntary Basic Pilot program now used by 16,000 employers.



FCA’S POSITION

Immigration legislation is being inundated with amendments as Members of Congress seek to add their changes; the Senate’s comprehensive proposal alone has had over 100 amendments introduced. We sympathize with our labor partner’s position on the guest worker program and the unfair methods of wage calculations; however, the FCA will withhold any firm position until the provisions of these bills stabilize, particularly in the following three areas:

Legalization of Illegal Workers’ Program (referred to as a “Z” Visa): The FCA commends Congress for trying to resolve the status of the 12M illegal workers already in the U.S. The current proposals have these temporary workers completing the following steps in order to obtain the “Z” status: (1) coming forward within 18 months of the bill’s enactment; (2) pleading guilty to breaking the law and being placed on probation; (3) paying an extensive fine and processing fee; (4) undergoing a criminal background check; (5) providing proof that they are currently employed; and (6) becoming proficient in English. To avoid the “amnesty” perception and to ensure these immigrants are here legally, the FCA wants to see the “touchback provision” included in the final version and the specifics on how it will be enforced.

Temporary/Guest Worker Program (referred to as a “Y” Visa). We agree with our labor partner’s opposition to this provision as currently written on the grounds that this category of worker would not be adequately protected from unscrupulous contractor abuse and exploitation and that an uneven playing field would be created in the private sector because of the method of wage calculations being proposed. In addition, if such a category of worker is created, we disagree with the two-year work periods, separated by one-year intervals outside of the U.S. away from the job. Because of the investments that an employer must make to recruit and train these temporary workers, the turmoil that would be created by such frequent and lengthy changes in work crews would negatively impact a contractor’s operations.

Employee Electronic Verification System: To enhance border security, the bill requires employers to electronically verify the employment status of all new hires within 6 months of the bill’s enactment. Within 3 years of enactment, all employees would need to be verified. Finally, federal contractors may be required to verify employees immediately. It is our view that such a program must be fairly enforced, easy to use, not costly to implement, and

accurate and reliable, with a “safe harbor” provision (i.e., no penalties assessed to employers who use it yet later find that some employees are identified as illegal workers). Also, we feel that more in-depth information needs to be forthcoming about how the Basic Pilot program will be administered, operated, and enforced in order for us to approve of the system’s viability for its efficient use by our contractors.

INDEPENDENT CONTRACTOR MISCLASSIFICATION

House Tax Panels Examine Costs of Workers Misclassified as Contractors—employers who classify workers as independent contractors rather than as employees cost federal/state governments billions of dollars in tax revenue each year, while depriving workers of legal benefits including unemployment insurance, workers’ compensation, and fair wages and hours. The GAO estimates the government lost \$4.7B in income taxes last year alone because of employers incorrectly classifying employees. Some of them intentionally misclassify employees to avoid taxes, insurance costs, and statutory protections for employees in an effort to cut costs and gain an advantage over their competitors during the contract bidding process. In 2008, the IRS intends to make worker classification cases involving whether workers are employees or independent contractors a major focus. It is our opinion that legislation in this arena would be an appropriate alternative to the ill-conceived 3% withholding tax on payments to contractors for goods/services provided to federal, state, and local governments (scheduled for 2011 under Section 511 of P.L.109-222: the Tax Increase Prevention and Reconciliation Act of 2005).



UNDERGROUND ECONOMY

Ontario to Target Underground Economy—the Ontario government will aggressively target the underground economy in construction through a joint enforcement initiative between the Ministry of Labour and Tario Warranty Corporation to locate unregistered home builders. This program will help enforcement efforts to clamp down on unregistered builders, help safeguard construction workers, level the playing field for legitimate contractors, and protect the home-buying public and the area’s economy.