WebMemo
Published by The Heritage Foundation
No. 1480
June 1, 2007

The Senate's Workplace Immigration Enforcement Proposal: Too Much Federal Meddling

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Mostly overlooked in the controversy over the Senate's immigration legislation is the massive expansion in the reach of the federal government's power over labor markets that is embedded in its worksite enforcement provisions. The legislation's third title calls for unleashing the IRS and immigration police on businesses and workers. These provisions would insert the federal government into the workplace in ways that would touch each and every U.S. worker. Rather than place great and unnecessary burdens on all workers and employers, Congress should focus workplace enforcement efforts where they are likely to do the most good.

New Government Powers. Among other expansions of regulatory control, Title III of S. 1348:

- Makes employers liable for the illegal workers that their contractors or subcontractors might have on their payrolls (Sec. 302(a)(3));
- Saddles employers with vastly increased record-keeping requirements (Sec. 302(c));
- Expands the pilot Employment Eligibility Verification System to nearly all businesses, large and small, even though the likely expense of implementing the system would be beyond the financial means of many businesses (Sec. 302(d));
- Permits the IRS to share detailed taxpayer data with non-governmental contractors of the Department of Homeland Security, thus breeching a long-standing barrier against such data sharing (Sec. 304(a)(1)(A));
- Permits the Department of Homeland Security to institute a fingerprinting program in private businesses in order to prevent the employment of undocumented workers; and
- Creates a new unit within the Criminal Investigation office of the IRS to investigate violations of federal tax laws by employers who hire undocumented workers.

All Workers Burdened. These provisions would force a bureaucratic nightmare upon every American worker and their employers. The bill provides amnesty to 12 million individuals who have broken the law while at the same time requiring all law-abiding U.S.-born workers, permanent residents, and non-immigrant workers to prove again that they are eligible for employment.

Under the proposal, each worker would be required to prove work authorization even if he or she has already done so under current law. A passport or birth certificate would not be sufficient; a new "confirmation" from DHS is required. American workers would actually need approval from DHS to continue working in their current jobs.

In addition, before contracting with other businesses, such as cleaning and construction compa-

This paper, in its entirety, can be found at:
www.heritage.org/Research/Immigration/wm1480.cfm

Produced by the Center for Data Analysis

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002–4999
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nies, employers may be required to check with DHS to "obtain confirmation from the Secretary that the contractor or subcontractor has registered with the Employment Eligibility Verification System (EEVS) and is utilizing [it] to verify its employees" (Sec. 302(a)(3)(B)).

The pilot EEVS is used voluntarily by more than 10,000 employers, according to DHS, to verify employment eligibility for about one million new hires per year.[1] The Congressional Budget Office has estimated that the proposal would require expanding this to more than 6 million employers conducting 65 million verifications each year and checking the records of 130 million existing employees.[2] The pilot EEVS returns automatic "confirmations" in only 85 percent of cases. The remaining 15 percent require a secondary verification conducted by DHS staff members, which can take up to two weeks. In 2004, when about 2,300 employers used the system, 38 staff were assigned to this responsibility. Mandating this program for all employers could put 15 percent of the workforce in limbo—neither authorized nor unauthorized, but "non-confirmed." Few of these workers are actually illegal, but if the government bureaucracy cannot confirm their legal status, companies would be forced to fire workers who fail EEVS verification.[3] This would put millions of U.S. citizens and legal immigrants out of work because of bureaucratic mistakes.

A worker whose records at DHS are not in order may be required to "appear in person at the appropriate…agency for purposes of verifying the individual's identity and employment authorization" within 10 business days (Sec. 302(d)(5)(C) (iii)(II)). If the worker fails "to take the steps required by the Secretary…a final nonconfirmation may be issued" and "the employer shall terminate employment of the individual" (Sec. 302(d)(5)(C) (iii)(III) and Sec. 302(d)(5)(D) (i)). In other words, the worker would lose his or her livelihood.

Bureaucratic Delays Unavoidable. This proposal would likely be impossible to implement in the real world. To meet the law's 18-month deadline, DHS would have to enroll 20,000 to 40,000 new employers a day in the EEVS system.[4] Within another 18 months, the government would have to verify the legal status of every employee at each of those firms. This is a massive new responsibility for an already overloaded bureaucracy that would also soon be swamped by 12 million new "Z" visa applications. It would also be an enormous, unproductive, and unnecessary burden on employers. In addition, it would shift DHS resources from tracking down illegal immigrants to processing the employment requests of tens of millions of U.S. citizens trying to switch jobs.

Better Alternatives. At first glance, the requirement to verify all current workers, not just new hires, seems so unworkable that it appears designed only to placate advocates of tighter enforcement of the laws. In practice, it would surely fail and ultimately be cancelled. That would be the good news. The real danger is that these provisions might actually be enforced.

It makes no sense to require every American to verify his or her employment eligibility when most illegal immigrants work in a handful of sectors of the economy, such as agriculture and construction. Very few software engineers work in America illegally. It makes far more sense to focus enforcement measures on employers likely to hire illegal immigrants. Requiring businesses to post surety bonds stating they are not hiring illegal immigrants would prove a far more effective and efficient workforce verification measure than giving the federal bureaucracy control over every American worker's employment.

Conclusion. This legislation turns common sense on its head by giving immediate legal status to

1. U.S. Citizenship and Immigration Services, Proven Employment Verification Tool Attracts 10,000 Employers, News Release, July 24, 2006.
2. Congressional Budget Office, Cost Estimate: Senate Amendment 1150 to S. 1348, June 4, 2007.
3. Institute for Survey Research, "INS Basic Pilot Evaluation Summary Report," January 29, 2002, p. 25, at *www.nilc.org/immsemplymnt/ircaempverif/basicpiloteval_westat&temple.pdf*.
4. J.J. Smith, "Penalties Would Increase Under Immigration Bill," Society of Human Resource Management, May 2007, at *www.shrm.org/global/news_published/CMS_021693.asp* (subscription required).

illegal aliens while putting in jeopardy the jobs of citizens. It would violate the privacy of millions of taxpayers while redirecting DHS resources away from dealing with the problems of illegal immigration to a massive new effort of re-verifying the legal status of citizens and permanent residents. Congress should reject this irreparably flawed approach to workplace enforcement.

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