

LABOR MANAGEMENT AND IMMIGRATION

Joseph R. Sigg
Arizona Farm Bureau

Take Home Messages:

- Immigration controversies are nothing new in our country's history.
- We have shortages of labor in agriculture (and other sectors) that will only worsen.
- Various government actions, taken piecemeal will only contribute to the shortage.
- Workplace enforcement on immigration issues is expected to increase.
- Knowledge and adherence to federal immigration laws with respect to hiring should be a major consideration for all employers.

When we live through political moments in time, we often forget the issues we face are simply being re-cycled. So it is with immigration. "Give us your poor, your hungry and tired" may be the historical spin to make us feel good, but it is not a mantra which our country's actual history supports.

Here are just a few examples from our history:

- In the 1750's Benjamin Franklin was railing against German immigrants – they just were never going to assimilate.
- We were anti-French during our second president's term.
- In the late 1860's we first needed Chinese and then we excluded them.
- The Irish were portrayed in political cartoons with animal faces in the late 1880's.
- In the early 1920's scientists were testifying before congress that immigrants from the Balkans, Eastern Europe and Russia were polluting our "germ plasm" – testimony that led by the way to the very restrictive Immigration Act of 1924 against the gypsies, tramps and thieves – my antecedents by the way.

These are but a few examples. The issue is back with a vengeance, a combination of xenophobia, Americans who are unsettled for a variety of reasons, security issues, as well as real and imagined social and criminal costs, because the numbers of immigrants are at such high levels. The rhetoric lacks proportion and balance, and is driven by extremes. Reasonable solutions and compromises are knocked down before they are presented. We press for enforcement of laws which cannot be enforced and label any discussion of reform as "amnesty" – the new scarlet letter "A" word of American politics.

We also live in a time where our legal system has not yet caught up with the consequences of unprecedented waves of immigration. Behavior on the ground always precedes codification in law, so when we are living through transition, our tendency is to exaggerate the problems.

In my view the derisive use of the word amnesty is code – it masks what we fear, what we don't want and our own insecurities.

However, make no mistake, the decade of the nineties saw almost unprecedented waves of immigration, both legal and illegal, predominately from our southern neighbors. While the actual

costs are wildly overstated, I will stipulate such levels of immigration have caused severe constraints, as well as a variety of social, criminal, environmental and cultural issues. It is like a huge ball of string with several pieces, but it is also like a balloon, easily shaped – if you press a solution at one point, a bulge is created at another.

One of the issues lost in the arguments is economics. All you want for your operations is a legal and reliable supply of labor. In return you will provide good jobs and a safe working environment for your employees. But I assure you your labor supply is neither legal nor reliable, and let's deal with these two issues – first reliability.

In 2008, for the first time in our country's history, more folks will be leaving the labor force than entering it.

Over the next 15 years, the number of residents over 55 will grow 5 times the growth of our labor force.

Our birth rate is flat to declining, we are increasingly educated and aging, and we have alternatives to entry-level skilled jobs.

And as an aside, immigration is not just about entry-level labor. Our annual quotas for specialty visas (about 85,000) were filled in only one day this year.

We are nearly at full employment, and where we have areas of the country where jobs are depressed, that does not translate into having those people where labor is needed. While the dairy sector is not, agricultural labor is typically seasonal and generally not available in the numbers where and when needed.

Over the coming decade, and despite our high tech economy some of the fastest growing job categories are for entry-level skilled labor, according to the Department of Labor.

We need 500,000 new entry-level workers in the economy every year, just to keep it expanding, and outside of agriculture, there are only 5,000 visas for unskilled workers to enter this country.

Jobs and job creation are highly complimentary – my ability to have and do my job depends on someone else having and doing theirs – especially in a “just-in-time” inventory type of economy.

You understand that in your business – most do not. When people reach for that carton of milk in the cooler, they have no idea as to the dependency upon various levels of risk, entrepreneurship, assembling of inputs, food safety, cooperation with government, transportation, packaging, marketing – all of these functions are interactive and rely on mutually dependent jobs being filled and accomplished.

We simply do not have the native born population to fill all job categories and while the wages you pay are rising – you understand that rising wages will not create additional labor pools available in the native born population.

For agriculture, all we have is H-2A – which by its design is intended to keep you from hiring immigrant labor and then only as a last resort. There are only 30,000 H-2A workers in this country – but a handful in Arizona and for very good reasons – and reasons we can go into if you have questions.

Generally, as the Udall Center at the University of Arizona puts it, countries are either immigrant sending or immigrant receiving. For better or worse, depending upon your point of view, our country is an immigrant receiving country, and those who deny it and attempt to prevent it are working at our own economic undoing.

Despite technology increases, the labor supply for agriculture is distressed – either we import our labor or our businesses will be exported. That is economic cold water. We can quibble as to whether Americans will or will not do these jobs, but it is simply that Americans are not available in the numbers needed.

Your labor supply is not reliable, and it is not sufficient to balance your business risks. But now you face new risks – legal risks from government action as to enforcement in the workplace.

We have many problems with immigration, both legal and illegal, but we are ignoring considerable economic consequences and we are doing so at our own peril. The agricultural industry, along with others is already short of labor and we certainly are moving to de-stabilize our economy

In 1986 when the federal government instituted the I-9, they essentially abandoned workplace enforcement. Documents were presented to employers, increasingly false, the I-9 was completed, placed in the file and that was the end of it. With both numbers increasing, 15% of our workforce is immigrant and 5% of our workforce is not legal. Despite the problems, you simply cannot back out that segment, as there is not a supply to replace it.

The numbers are in the millions and the federal government is stepping up its workplace enforcement and border security, and as you know, comprehensive immigration reform has yet to be addressed. This will make worse an already tight labor supply.

Effective September 14, we have a change on social security mis-matches, almost a paradigm change for employers. Until this time, employers were not held responsible for social security mis-match letters, but they now have ninety days to work through the issues, and if not, they can be held responsible for having constructive knowledge of employing those not work authorized.

The federal government has looked the other way for years, and now they are placing enforcement all on the backs of employers, without considering the issues of a reliable labor supply.

At the same time states and localities are attempting to do what they cannot under constitutional and statutory law, i.e. regulate immigration. Arizona has passed a new “two strikes and your out” employer sanctions law, and an initiative is being circulated that can put a business on the ropes with one offense. Both would revoke state issued licenses. All entities have them, i.e. permits for operating or structural licenses such as articles of incorporation.

Supporters of these measures maintain no one will be penalized for mistakes, but that is not correct. Injunctive relief action has been filed in federal district court to block this new state employer sanctions law. The suit contends the state law violates procedural and due process of the U.S. constitution, is preempted by federal law, violates interstate commerce, is discriminatory and violates the Arizona constitution. Incidentally, the same issues that apply to the state statute would also apply to the initiative being circulated.

Recently, a federal court tossed out a similar law passed by the city of Hazleton, Pennsylvania. While this does not create precedent for the Arizona law, we hope it is indicative as to how other federal courts will look at these élans.

Yes we need to fix our immigration system. We need to fix our border, our documents, means to verify them and we must fix our visa system. We cannot fix this through patchwork and piecemeal solutions at the level of states and localities. It won't work.

What can you do, at the present time?

- You need absolute compliance with the I-9 process and procedures. You need to audit your files. There are manuals available and legal assistance available for the asking. Very clearly there are things you should and should not be doing, and guidance is needed.
- Employers and their supervisors should not be having conversations with employees regarding whether they are work authorized in this country.
- Apply your policies uniformly. More than ever employers will be walking a tightrope between areas of constructive knowledge of employing those not work authorized and discriminatory issues.
- You need to know and understand the H-2A process, what it offers and its limitations. If you are not using it, you may have to, even without reform, and there are several reforms needed.
- You must be creative in finding new mechanisms for recruiting labor.
- We must push for more technology to decrease our reliance on labor.
- Continue to press your congressional delegation for fully integrated solutions to our immigration issues.