

was nominated for the post, offered to meet with her to discuss the challenges facing her.

In a statement, Sweeney said: "The AFL-CIO believes strongly that the continued strength of America's economy ... depends upon government, labor and management working together on important common issues. We will certainly support any nominee who shares this perspective."

Communications Workers of America president Morton Bahr addressed Chao's qualifications more specifically. "I can attest to her leadership skills, her integrity and her ability to bring together diverse interests.... I believe she will be responsive to the needs of working families."

And the International Association of Machinists and Aerospace Workers, the second-largest industrial union in North America, issued a statement reading in part: "We trust Ms. Chao understands the need for strong laws to protect workers wages, pensions and equal employment rights."

Employer groups indicated they looked forward to working with a Labor Secretary who was not firmly on the side of organized labor, however. The Associated Builders and Contractors (ABC), a national construction association, issued a statement praising Chao for her views on free enterprise and open competition. "We are confident that she will establish a solid rapport with those representing the companies employing the over four out of five U.S. construction workers who choose not to join a labor

union," said ABC president Henry Kelly.

"Elaine Chao has a proven track record throughout her career of making bold changes and major improvements that will serve her well in revamping the U.S. Labor Department so that it effectively serves 21st century employees and employers," said National Association of Manufacturers President Jerry Jasinowski.

Changes in the DoL

Glowing words from organized labor notwithstanding, employment law experts say there will be substantial differences in a DoL under a Republican administration.

Michael Karpeles, a principal employment attorney at Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, says that under a Republican DoL, "there will be a more limited view of the law. Rather than pushing the law to extremes to accomplish the liberal agenda, any Bush Department of Labor is probably going to do no more than the Supreme Court requires in terms of affirmative action programs."

"There will probably be less vigilance in terms of compliance with ergonomics and affirmative action programs," Karpeles adds. "But, of course, the department will continue the practice of focusing its resources on large scale legal violations." As for those guidances that are so pesky to HR, Karpeles thinks there will be far fewer issued from agencies and commissions under the DoL.

Overall, Karpeles says he thinks the perspective of the employer will be given as much weight, if not more, than that of the employees. One other pro-employer step that may be taken under the new administration, Karpeles notes, is that "Bush may change the composition of the NLRB. The unions are concerned with that since the NLRB has been more of a friend to unions, but a new composition could mean the NLRB may grow to favor employers."

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Immigration

LIFE'S MYTHS AND TRUTHS

by Timothy Pajak

The Commerce/Justice Appropriations budget bill signed by former President Clinton on Dec. 21 contains immigration legislation that will impact a variety of employers, particularly those with high concentrations of immigrant workers such as the construction and hospitality industries. *HRWire* dispels some of the myths and misconceptions surrounding the new law.

Three requirements

The Legal Immigration and Family Equity Act of 2000 (LIFE) temporarily reinstates a regulation known as Section 245(i), which allows employers to sponsor certain undocumented immigrants to apply for legal residency.

Intended for immigrants living in the United States who might have overstayed their visas, worked without authorization, entered the country without visas or violated the terms of their status, Section 245(i) was in effect between 1994 and 1998. Without the law, illegal immigrants wanting to change their status were ordered to leave the country for at least three years.

Now as many as 200,000 eligible immigrants can apply for green cards under Section 245(i) without leaving the country (and possibly being barred from re-entering for up to 10 years).

Immigrants must meet three provisions:

- File an immigrant petition with the Immigration and Naturalization Service (INS) or labor certification with the Department of Labor by Apr. 30.
- Show they were physically present in the U.S. on Dec. 21 and pay a \$1,000 fee.
- Have a qualifying close family member (e.g., spouse, parent, sibling) or employer to sponsor them.

What's the process?

When an immigrant finds an employer willing to sponsor him or her, the employer must first file the labor certification (ETA 750 A&B) on the employee's behalf. After the approval of the labor certification, an immigrant worker petition (I-140) is filed. If the employee is currently residing in the United States, the final step is to file an "adjustment of status" (I-485), which upon approval grants

the immigrant permanent residency in the United States. However, if the employee is not currently in the country, he or she must first go to the U.S. consulate in his or her home country and pick up a package with the employee's permanent residency documents before entering the United States.

The alternative to employment-based permanent residency is to apply for a family-based green card. The immigrant's family member must file an alien relative petition (I-130) for him or her. After this is approved, the immigrant must either file the I-485 (if he or she is already in the country) or obtain a permanent residency package from the local U.S. consulate in his or her home country.

Helping hand

Some immigration attorneys say that a lack of thorough newspaper coverage combined with misinformation has left the immigrant community in the dark. Thus, many immigrants may pass up the chance to change their status for fear that doing so will only cause them to suffer unwanted scrutiny from INS or risk termination of employment.

But immigration attorneys also say many of the immigrants who have contacted them have done so at the urging and assistance from their employers. The limited restoration of Section 245(i) also gives employers an opportunity to supply their employees with the facts needed to address any out-of-status issue an employees' relative may have.

Getting legal

Are you employing an illegal immigrant? Or have you recruited a potential employee who is illegal but you really want them to work for you? There are several considerations you should make before taking advantage of Section 245(i). For many employers, hiring illegal immigrants is a matter of survival because they cannot find American workers willing to do the work. The attitude of some employers is that "it's better to risk getting a fine than going bankrupt," says Greg Siskind, of Siskind, Susser, Haas & Devine.

When an employer suspects that an employee is illegal, it's a choice between the lesser of two evils says Siskind. "If it turns out the person really is illegal, there's a possibility that they could be facing penalties," Siskind tells *HRWire*. "It's not easy. But I would typically recommend that if an employer knows they have illegal workers, they are still better off having them apply for permanent residency." INS rarely goes after employers while they are trying to complete the process of legalizing an employee, says Siskind.

Employment usage

Immigration attorney Carl Shusterman provides an example of a situation where an employer would be involved. "Raj is a computer programmer in his third year of college in Georgia. Unfortunately, he is not in legal status," says Shusterman. "When he finishes school, he will not be able to go abroad to obtain an H-1B visa because he is subject to the 10-year

bar. However, Raj's wife's sister is a U.S. citizen. She has never bothered to apply for Raj's wife because the waiting time from sister-to-sister petitions for persons born in India exceeds 12 years. Last week, we prepared and submitted a visa petition for Raj's wife. Since we did so before April 30, 2001, this made both Raj and his wife 245(i)-eligible."

Shusterman recommends that a potential employer sponsor Raj for permanent residence upon graduation in June 2002. Although this is after Apr. 30, 2001, "Raj is 245(i)-eligible because his sister-in-law's petition was filed (although not approved) by April 30, 2001," Shusterman explains. "Once the petition is filed, Raj became 245(i)-eligible for LIFE. This is true even if his sister-in-law has a change of heart and withdraws the petition prior to approval." And it's true even if Raj's wife dies or they are divorced (and remarry) before the approval of the petition.

Misconceptions

A number of rumors have been circulating about Section 245(i), including that it offers some type of amnesty. "There is not an amnesty," says Siskind. "It is not automatic that just because somebody's here they're going to get a green card."

"V" STATUS
 Another provision of LIFE relevant to employers is the new temporary "V" non-immigrant status. It is available to the spouses and minor children of lawful permanent residents waiting more than three years for an immigrant visa based upon an immigrant petition filed on or before Dec. 21.
 Persons granted "V" status would receive employment authorization and are protected from removal.

In addition, Section 245(i) does *not* grant work authorization or provide protection from deportation.

Other misconceptions include a lack of knowledge of the deadline requirements and the options available to immigrants.

"A lot of immigrants don't understand that they have to find an employer to go through the process if they don't have relatives here in the U.S.," Siskind tells *HRWire*. "I'm getting emails from people all around the world saying 'I heard about this 245(i).' Well, first of all, you have to be in the country. Second, you have to still be eligible for permanent residency. You have to prove that they were in the country when the law passed. We don't know how easy that's going to be to show." And with the INS yet to issue regulations, there still remains some uncertainty about the process.

Contact: Greg Siskind, partner, Siskind, Susser, Haas & Devine, 800/748-3819.

Online: Read Carl Shusterman's explanation of 245(i) at http://www.ilw.com/lawyers/colum_article/articles/2001,0115-Shusterman.shtm and INS guidelines at <http://www.shusterman.com/>. INS fact sheets on the LIFE Act can be found at <http://www.ins.usdoj.gov>.



MANAGING A WORKFORCE

Drug Testing

DOT REVISES ITS SAFETY-SENSITIVE REGS

by Maureen Minehan

The U.S. Department of Transportation (DoT) releases long-awaited revisions to its drug and alcohol testing rules. The new rules amend regulations first issued in 1988 that require drug testing of employees in safety-sensitive positions in the aviation, motor carrier, rail, transit, maritime and pipeline industries.

Developed through a coordinated effort by DoT, transportation employers, labor organizations, and drug and alcohol testing service providers, the 300-page document differs significantly in some areas from the original regulations.

The following highlights key changes from current requirements:

- To ensure fairness to employees, a medical review officer—who must be a physician—must review the test results when a laboratory indicates that an employee's specimen may have been adulterated or substituted. Any employee also will be able to obtain, at a different certified laboratory, a test of his or her split specimen (specimens are split into two separate containers to allow for retesting) to make sure that the original laboratory did not make an error.
- Validity testing, which is designed to deter and detect attempts to adulterate or sub-