



Storage Awaits Immigration Reform

Owners, managers need to know the law before hiring employees and contractors.

By Laura Williams-Tracy

With few employees per store and even fewer high-tech workers, the self storage industry isn't on the front lines of controversy over illegal immigration.

More often, illegal immigration impacts industries with large numbers of low-wage workers, such as restaurants or agricultural businesses, or highly technical employers seeking those with the most advanced skills.

But as Congress moves toward what could be a signature piece of legislation this year to reform immigration, businesses are awaiting the change. And the states with the most self storage space—Florida, Texas and California—by their location are among those most likely to see an impact.

"Immigration reform would potentially affect us hiring managers," said Chris Price, president of The Price Companies, which operates self storage facilities in eight cities, including stores in the border towns of El Paso and Laredo, Texas. "In most all of our facilities we make sure we hire managers who are bilingual simply because Spanish speakers are a big percentage of the market."

But concerns about legal documentation don't plague the storage industry more than other industries, and probably less so, Price said.

"I never hear anyone talking about illegal immigration in self storage," Price said. "In San Antonio, 62 percent of

the population is Hispanic. For many people in this part of the country, we are all so integrated and a lot of these illegal immigrants are employed and paying taxes that it just really hasn't been an issue."

Current Employment Rules

Operators should know that it's currently illegal for employers to hire workers who they know, or should have known, came to the U.S. illegally.

All employers must complete a form called an I-9 verifying new workers' legal status, said Carlos Kaslow, general counsel to the Self Storage Association. But doing more than that opens up employers to penalties for discrimination on the basis of citizenship status or national origin.

"In interviews and applications, how questions are phrased can be very important," Kaslow said. "For example, don't ask, 'Are you a U.S. citizen?' However, you can ask, 'Are you authorized to work in the U.S.?'"

Some states, including Arizona, require employers to do E-Verify screening. E-Verify is a free online service offered by the Department of Homeland Security that allows employers to voluntarily check the employment eligibility of their workers. State authority to require employers to check workers' legal status through E-Verify or risk losing their business license was upheld by the U.S. Supreme Court in 2011.

Above: The Price Companies has storage facilities in eight cities, including this one in El Paso, Texas.

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Immigration Reform Consumes Both Parties

By April, the U.S. Senate appeared to be making progress on a proposal for comprehensive immigration reform. A 900-page proposal details a 13-year path to citizenship for the nation's estimated 11 million immigrants who entered the country illegally.

Those close to the bill writing say it would require illegal immigrants to register with Homeland Security Department authorities, file federal income taxes for their time in America and pay a still-to-be-determined fine. They must also not have a criminal record.

Those granted a probationary legal status, which is the first step to becoming a legal citizen, would be allowed to work but prohibited from receiving federal public benefits such as food stamps, family cash assistance, Medicaid and unemployment insurance.

A compromise seems likely because both Republicans and Democrats stand to gain politically from tackling the contentious issue. Republicans see the issue as a way to regain some favor among an increasingly diverse population that did not support the Republican presidential ticket in 2012.

President Obama has wanted to reform immigration since he took office in 2009, but a bitter healthcare reform debate and weak economy have kept the issue, important to many Democrats, off the table.

Gerald Bloch, an employment attorney in California, says employers might see the E-Verify system—a free, online screening service offered by the Department of Homeland Security—become mandatory for employers to check the legal status of their workers.

“If Congress decides and the president agrees to pass legislation to make E-Verify mandatory, it will affect all employers, because federal law supersedes inconsistent state laws,” Bloch says.

Of course, until a bargain is struck, what exact form immigration reform might take is anyone's guess.

—By Laura Williams-Tracy

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Bryan Lekas, vice president of Value Store It, which has facilities in Florida, Connecticut and New York, said his company is strict on prescreening new hires, knowing that violating federal laws on hiring undocumented workers can mean hefty fines and even prison sentences.

“We get birth certificates, driver's license, passports, and if they are an alien resident we need an alien resident card,” Lekas said. “We rarely get applicants without documentation. I've had no issues in 16 years in the storage industry.”

Beyond avoiding directly employing illegal immigrants, owners and operators must tread carefully when hiring contract workers, said Gerald Bloch, an employment lawyer and general counsel for small and mid-size businesses in California who spoke recently at the California Self Storage Association's annual meeting.

Even if storage owners hire contract workers for such jobs as landscaping or maintenance, they must make sure to treat those workers as independent business owners and not employees. Misclassifying an employee as a contract worker—whether here in the U.S. illegally or not—can create havoc for small business owners. But the penalties are even larger if that contract worker is found to be here illegally.

Bloch said independent contractors should be paid a gross check with no deductions taken out. Those same contractors should be given a 1099 form at tax time that shows what they were paid for the year. It's the contractor's responsibility to pay their own taxes.

If the relationship isn't held at arm's length, problems can arise. A truly independent contractor, such as a landscape contractor, will use his own truck, bring his own mowers and equipment, supply his own materials and delegate work to his own employees.

“Don't tell them when they have to come and how long they have to stay,” Bloch said of contract employees. “You can say, ‘come Friday,’ but don't restrict their hours. And don't supply materials and equipment. Mischaracterizing someone as an independent contractor can make a business subject to a wide range of potential penalties.”

Bloch said there are federal tests for determining contractor status, and many states have their own tests for determination.

Renting to Undocumented Residents

Currently, there are no laws regarding renting storage units to people who might be in the country without documentation. And there is no burden on store owners to determine a renter's citizenship.

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"We recommend to our members that they require an ID of some type," said Ginny Sutton, executive director of the Texas Self Storage Association, adding that owners prefer a U.S. government-issued license or passport to other forms of ID.

Mara Medof of North Miami Mini Storage requires a photo ID to rent a unit in her facility, located in a Miami neighborhood with many Haitian nationals.

"We need to know you are who you say you are," Medof said. "I know someone is an illegal when they walk out of here. That's about as far as it goes. It happens probably once a year."

Medof said checking IDs is more to deter illegal activity rather than to turn away undocumented residents.

Having a heavily immigrant population where there's a chance some or many are in the country illegally can present some challenges to operators in the area.

Medof and Lekas, who operate stores in Miami, said they must be vigilant about renters storing collected clothing, furniture and food in units that tenants send in big shipments to family members in other countries.

"It's not allowed to store food because it attracts mice and rodents," Lekas said. "In our rental agreement it states that you are not allowed to store food. We had an issue with someone bringing in 50 pound bags of rice and flour and we had to evict them. We are alright with the clothing and furniture."

Lekas and Medof say they also occasionally have renters, possibly here legally or not, wanting to live in the storage units because they haven't been able to find another place to live.

"I have always said that if we had zoning-approved, live-in units you could be 100 percent occupied with a waiting list," Lekas said.

It's an issue not limited to potential illegal immigration but a factor of how a city's homeless population can spill into storage businesses, Lekas said.

"Good managers can tell by seeing the reports on gate use and if the bathrooms are trashed," Lekas said. "Half the time we have to call the police to get rid of them, but we try to hook them up with a church or halfway house to take them in."

For most storage operators, legal residency is less of an issue than the likelihood of commerce.

"The real criteria people use is 'can you pay your rent and you are not a criminal,'" said the Texas association's Sutton. "If you meet those criteria then you are welcome to store." ❖