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## Employers: The New Racketeers?

**Employees are using the federal Racketeer Influenced and Corrupt Organizations statute as the basis of lawsuits charging their companies with recruiting illegal workers and using them to drive down wages.**

By Sara E. Savage

The word "racketeer" conjures up the image of a mobster, strong-arming a shopkeeper in an attempt to get a piece of the action; not that nice lady who had you sign your employment documents, right?

Some employees concerned about what they see as workplace immigration violations would say "think again," and are using the federal Racketeer Influenced and Corrupt Organizations statute as the basis of complaints against their companies.

Two recent class-action lawsuits have brought the issue to the forefront, with American workers in each case alleging their employers violated federal **RICO** regulations by recruiting illegal workers and hiring them to drive down wages. At issue in both cases were the actions of third-party vendors – recruiters, temporary agencies and subcontractors – hired by the employers for staffing purposes.

In a case that was before the U.S. 9th Circuit Court of Appeals, *Mendoza vs. Zirkle Fruit Co.*, the plaintiffs (Zirkle employees in Selah, Wash.,) sought to convince the court they suffered injuries because of wages they lost when Zirkle, a fruit grower, filled packing positions with inexpensive, illegal workers. The case was settled on the eve of trial in January for a reported preliminary payout of \$1.3 million.

A pending case is *Williams vs. Mohawk Industries*. Mohawk, a large carpet manufacturer in Calhoun, Ga., unsuccessfully sought dismissal of the case in the U.S. District Court for the Northern District of Georgia and the U.S. 11th Circuit Court of Appeals.

In both cases, the courts found the plaintiffs had a reasonable chance to prove their allegations that Mohawk knowingly conspired with third-party vendors to violate federal immigration laws, destroy documentation and harbor illegal workers. The company petitioned the U.S. Supreme Court to hear the case, and it was accepted for review.

Zirkle Fruit Co. declined to comment on its case and Mohawk Industries did not

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return phone calls seeking comment.

Littler Mendelson, which concentrates on employment-law cases, is representing one of the temporary staffing companies involved in the *Mohawk* case, but not named as a party to the lawsuit.

"Employers need clear and practical standards by which they can safely measure their immigrant labor policies," says Don Benson, a senior litigator in the firm's Atlanta office. "It is easier to be a target than one might think."

Any company with a recent, rapid increase in new, low-skilled workers in the past five years, a history of immigration inspections by federal agencies or a size so large that its wage rates affect the rates of other area employers, could be liable under **≤ RICO ≥**, says Benson.

The common factor that ties most of the companies brought to trial is they are large companies with large bank accounts, he says.

The knowledge that there are workers lacking the required documents to legally work, or that workers have been encouraged to acquire false identifications, can be cause for liability, says Benson. In a **≤ RICO ≥** enterprise, individuals can be singled out and made responsible for the actions of other members of the enterprise, he says.

The use of third-party vendors can "add a new layer of liability to large employers in an area," Benson says. "There will be heated contests over how much evidence is needed of the conspiracy or [whether] the employer knew or directed the acts of the third-party conspirators."

In the cases mentioned above, the contractor/recruiter was accused of one of the three offenses: knowingly hiring 10 alien individuals in a 12-month period, hiding aliens who illegally entered the United States and/or encouraging an illegal alien to come to the country despite immigration laws.

Employers who want to avoid allegations of **≤ RICO ≥** charges would do well to scrutinize how they interact with their third-party contractors, Benson says.

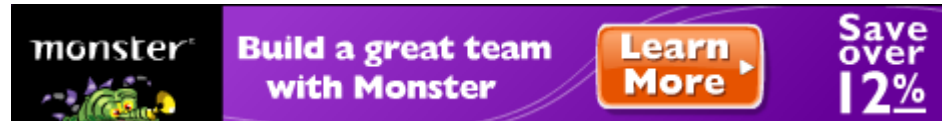
Investigating contractors to make sure they conduct a legal operation, and implementing supervision and reporting requirements can help a company avoid **≤ RICO** violations, says Benson. Other tips include the following:

- \* Contracts with third-party vendors should be revised to include language regarding immigration-law compliance and protection provisions.
- \* Contracts should include a written description of the recruiting, screening and hiring procedures of contractors.
- \* Human resource professionals should be trained on a continuing basis, so they can regularly monitor and report on contractors and hiring data.
- \* Contractors should also be required to audit contractor I-9 forms along with report results and notices from the Social Security Administration.
- \* Companies are also encouraged to keep records of community activities, advertising and applicants, to reveal the ways in which immigrant workers identified their facilities as possible employers.

"The best solution is like false teeth -- one size does not fit all," says Benson. "Each employer will need to look closely at a number of factors, including the depth and quality of the management on-site at the exposed facility."

**January 31, 2006**

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