

Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act of 1986 (IRCA) was passed to control unauthorized immigration to the United States. Employer sanctions, increased appropriations for enforcement, and amnesty provisions of IRCA are the main ways of accomplishing its objective. The employer sanctions provision designates penalties for employers who hire aliens who are either not lawfully admitted for permanent residence or are not authorized to be employed in the United States. Under the amnesty provision, illegal aliens who lived continuously in the United States before January 1, 1982, could have applied to the Immigration and Naturalization Service (INS) for legal resident status by May 4, 1988, the application cutoff date.

How the Law Applies to Agricultural Employment

The IRCA provision with the greatest effect on agricultural employers is the employer sanctions provision (table 6). This provision requires all employers to verify the eligibility of each employee hired to work in the United States. Additionally, it

prohibits employers with more than three employees from discriminating against “individual (other than an unauthorized alien, as defined in the act) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment, because of national origin, or in the case of a protected individual (a citizen or national of the United States, or an alien who is lawfully admitted for permanent residence, etc.), because of such individual’s citizenship status” (1). Two examples of employer discrimination are: (1) asking applicants for additional documents after they have provided sufficient documentation for employment; and (2) being inconsistent with document requests between applicants. In 1997, 279,272 farms or 43 percent of farms with hired labor expenditures, had three or more hired workers (14).

The H-2A program, another provision of IRCA, establishes procedures that allow agricultural employers anticipating a shortage of domestic workers to apply for permission to bring nonimmigrant aliens into the United States to do temporary or seasonal agricultural work. Because the requirements of the

Table 6--Immigration Reform and Control Act of 1986: Summary of applicability to agriculture and penalties for violations

Provisions	Exemptions for agriculture	Basis for agricultural exemptions	Enforcement
Employer sanctions			
All employers are required to verify that each employee hired after November 6, 1986, is eligible to work in the United States.	None	No exemption after December 1, 1988	<p>Responsible agency Immigration and Naturalization Service, U.S. Department of Justice.</p> <p>Penalties Fines ranging from \$250 to \$10,000 for each unauthorized alien. Maximum 6-month prison sentence if violator demonstrates a persistent pattern of hiring unauthorized aliens.</p>
Discrimination			
Employers are not allowed to discriminate against any individual (other than an unauthorized alien) with respect to hiring, or recruitment, or referral for fee, of an individual or the discharging of the individual from employment because of national origin.	None	Three or fewer employees	<p>Penalties: Fines ranging from \$250 to \$2,000 for each individual discriminated against.</p>

Source: Compiled by USDA, ERS from 8 Code of Federal Regulations.

temporary worker provisions are not mandatory for all agricultural employers, they will not be discussed in more depth. Employers seeking more detailed information should contact the nearest regional office of the Employment and Training Administration (ETA), U.S. Department of Labor. *The H-2A Program Employer Information Booklet* is available from ETA on request.

Employers must verify the eligibility of each employee hired after November 1986 to work in the United States by completing INS Form I-9. An employer must examine documents that establish the employee's identity and eligibility to work in the United States before completing this form. IRCA and the INS regulations are clear about documents that are acceptable to fulfill these requirements. The documents that INS will accept to establish identity and employment eligibility are divided into three groups: those that establish both identity and eligibility, those that establish identity, and those that establish eligibility for employment.

Documents acceptable for establishing both identity and employment eligibility (called List A documents) are: (1) a U.S. passport, (2) an unexpired foreign passport with attached employment authorization, (3) an Alien Registration Receipt Card or Permanent Resident Card, (4) an unexpired Temporary Resident Card, (5) an unexpired Employment Authorization Card, and (6) an unexpired Employment Authorization Document issued by the INS containing a photograph. In the case of aliens authorized by the INS to work only for a specific employer, an unexpired foreign passport with Form I-94 containing an endorsement of the alien's nonimmigrant status is an acceptable document for establishing both identity and employment eligibility (1 and 17).

Documents acceptable for establishing identity (called List B documents) are: (1) a driver's license or identification card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address; (2) an identification card issued by Federal, State, or local government agencies or entities containing a photograph or information such as name, date of birth, sex, height, eye color, and address; (3) a school identification card with a photograph; (4) a voter registration card; (5) a U.S. military card or draft record; (6) a military dependent identification; (7) a

U.S. Coast Guard Merchant Mariner Card; (8) Native American tribal documents; or (9) a driver's license issued by a Canadian Government authority (1 and 16). Persons under age 18 unable to produce any of these documents for identification may present any of the following to establish identity: (1) a school record or report card, (2) a clinic doctor or hospital record, or (3) a day care or nursery school record (1 and 17).

Documents acceptable for establishing eligibility for employment (called List C documents) are: (1) a nonlaminated social security number card other than one which has printed on the face "not valid for employment purposes in the United States"; (2) Certification of Birth abroad issued by the U.S. Department of State; (3) an original or certified copy of a birth certificate issued by a State, county, municipal authority, or outlying possession of the United States bearing an official seal; (4) a Native American tribal document; (5) a U.S. citizen identification card, (6) an identification card for use of resident citizen in the United States; and (7) an unexpired employment authorization issued by the INS (other than these for identity and employment eligibility) (1 and 17).

In addition to the documents specified above, employers may accept documents that have restrictions attached. Employers must be aware of the restrictions when accepting the following documents for proof of employment eligibility:

- *Application for a replacement document.* A person may present a receipt showing application for a replacement document. An application for initial work authorization or an extension of expiring work authorization is not acceptable. After 90 days, the person must present the actual document (17).
- *INS Form I-94 indicating temporary evidence of permanent resident status.* A lawful permanent resident may present the arrival portion of the Form I-94 (Arrival-Departure Record) that the INS has marked with a temporary I-551 stamp and has affixed the alien's picture. The Immigration and Naturalization Service may issue this document if an alien is not in possession of his or her passport and requires evidence of lawful permanent resident status. After 180 days, the person must present Form I-551, Alien Registration Receipt Card (commonly referred to as the "green card") (17).

- *INS Form I-94 indicating refugee status.* A refugee may present the departure portion of the Form I-94 containing a refugee admission stamp. After 90 days, the person must present either an unrestricted social security card (along with a List B identity document) or an INS Form I-766 employment authorization document, or Form I-688B (17).

Enforcement

Under the employer sanctions of IRCA, employers who knowingly hire aliens not authorized to work in the United States are subject to fines ranging from \$250 to \$10,000 for each unauthorized alien. Any employer who shows a persistent pattern of hiring unauthorized aliens risks a maximum 6-month prison sentence. Every employer, therefore, is required to verify that all employees hired after December 1, 1988, are eligible to work in the United States. A number of State employment security agencies (employment services) screen applicants and refer only those who have documents acceptable for a valid Form I-9.

An employer found guilty of discriminating against any individual authorized to work in the United States may be required to pay a civil penalty of not less than \$250 and not more than \$2,000 for each individual discriminated against. In the case of repeat offenders, these penalties may go as high as \$10,000 for each individual discriminated against.

Summary

The Immigration Reform and Control Act of 1986 (IRCA) was passed to control unauthorized immigration to the United States. The IRCA provision with the greatest effect on agricultural employers is the employer sanctions provision. This provision requires all employers to verify the eligibility of each employee hired to work in the United States. Additionally it prohibits employers from discriminating against any individual, other than an unauthorized alien, with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment, because of the individual's national origin or citizenship status.