

# FINANCIAL TIMES

## OBAMA'S IMMIGRATION POLICY LEAVES COMPANIES EXPOSED

By Barney Jopson  
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Businesses that employ low-skilled immigrants are worried that President Barack Obama's immigration policy will expose them to new legal risks by encouraging employees to confess that they are working on false documents.

Mr Obama is using his executive powers to shield more than 4m unauthorised immigrants from deportation and offer them work permits, a move that highlights the US's reliance on a black market labour force that accounts for 5 per cent of all workers.

The president's action marks the biggest change to immigration policy in decades and has thrown up legal uncertainties for employers – as well as immigrants themselves – as unprecedented numbers of people prepare to move from illegal to legal status.

Businesses are worried that if a worker tells them they are applying for the president's programme – thereby admitting he or she is working illegally – the companies will immediately be breaking a federal law against "knowingly" employing an unauthorised worker.

Mr Obama's executive action has also sparked fury among Republicans. They are planning ways to block it in the early months of next year when they take control of both chambers of Congress.

The corporate concerns are acute in construction, agriculture, food processing, cleaning and hospitality where low-skilled Hispanic immigrants make up a large proportion of the workforce, said Tamar Jacoby, president of ImmigrationWorks USA, an alliance of small businesses.

"What's likely to happen in many businesses," she said, "is the man who's worked for you for 10 years who you think is called Juan is going to come and say: 'I have the keys to the back office and the combination to the safe and I'm one of your most trusted employers, but my name's not Juan, it's Jose. That social security number I gave you is fake and I've been lying to you.'"

US Immigration and Customs Enforcement, a division of the Department of Homeland Security, conducts audits of workplaces and penalises or even prosecutes business owners and managers found to be deliberately employing illegal workers. ICE says many immigrants rely on criminal organisations to obtain authentic-looking documents via identity theft and social security fraud.

The law requires businesses to verify that employees have the right to work in the US, and Ms Jacoby said most employers "hope and believe" that their employees are authorised.

But it has been easy for unauthorised immigrants with fake, borrowed or stolen documents to get through a process that traditionally consists of visual checks of photo IDs and social security numbers. An electronic verification system called E-Verify exists but its use is not

compulsory. Some employers are reluctant to pose searching questions over documents due to fear of being accused of discrimination.

David Fitzpatrick of Labor Law Monitoring, who inspects clothing factories for big outsourcers in Los Angeles, said: "To use a common phrase, it's a 'don't ask, don't tell' policy. We're just taking the documents on face value."

According to the Pew Research Center, the total size of the unauthorised labour force is 8.1m and 69 per cent of the 4m-plus people eligible for work permits under the president's programme already have jobs. The government will begin accepting applications from them next year.

Joe Trauger, vice-president of human resources policy at the National Association of Manufacturers, said: "What do you do when an employee says 'I need to give you my new legitimate tax ID because what I've had is a fake'? That's a big problem . . . There's got to be a process or some sort of safe harbour for businesses in that instance."

He said the legalisation process would cause problems for companies with "honesty policies" that say employees should be disciplined or fired if they are found to have lied. He also noted that the executive action could be reversed by a future president, rendering millions of workers illegal all over again.

The biggest group of unauthorised immigrants eligible for the president's plan are parents of US citizens and legal permanent residents, or green card holders.

The Obama administration has not yet issued guidance for employers, but it sought to reassure them in 2012 when Mr Obama used his executive powers to stop the deportation of young people brought to the US illegally as children.

It said that if businesses gave workers documentation to verify their presence in the US – and in doing so acknowledged they had been working illegally – that information would not be shared with ICE for enforcement purposes "unless there is evidence of egregious violations of criminal statutes or widespread abuses."