

Employers Have a Lot to Lose

By [BARRY NEWMAN](#)

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Balding and weathered, wearing a work shirt, Dave Penry stands in a park while men in windbreakers rake grass behind him in a television commercial that casts him as the unlikely – and lonely – front man for employers who rely on immigrant laborers.

“My partner and I own a landscaping company in California that employs 60 people, and two-thirds of them are immigrants,” Mr. Penry tells the camera in a 30-second spot now running nationally. “They have as much pride in America as you or me. We need to fix our laws so they can work in this country legally and get the respect and dignity they’ve earned.”

The camera closes in on Hispanic-looking men pruning trees. As music rises, a caption appears: “Building the American Dream.”

A TV ad featuring landscaper Dave Penry backs laws friendly to immigrant workers.

Immigrants are protesting from Los Angeles to New York, lawmakers are haggling over new bills and President Bush talks of bringing millions of workers out of the “shadows.” The voice largely missing from the tense debate so far has been the bosses who hire illegal immigrants, leaving their lobbyists to speak for them.

“We don’t press our members to come out and talk,” says John Gay, who co-chairs the Essential Worker Immigration Coalition. Its 45 members range from the Society of American Florists to the Outdoor Amusement Business Association. “We make the case,” he says, “rather than having individuals stick their necks out.”

Which is why Mr. Penry, an owner of Pacific Landscapes, Inc. in Sonoma County, Calif., is so rare.

“How would you like to have been the first guy to talk about erectile dysfunction?” Mr. Penry says. “That’s a good analogy. Bob Dole had some guts.”

Mr. Penry was speaking out for a bill that, in sterner form than he would prefer, got bottled up in the Senate last week. If it sees the light again after Congress returns from its Easter recess – and then overcomes powerful opposition in the House – at least a portion of the country’s undocumented population of more than 11 million could gain legal status and eventual citizenship.

But any new regime would also jack up workplace enforcement and impose severe punishment – including jail time – on employers who give jobs to people who don't have the proper documents. It is a sign of the issue's history of dangers and delicacies for business that, when asked the direct question – Do you, in fact, employ illegal immigrants? – even Mr. Penry stops short. He says, "I don't know."

Unauthorized immigrants may live in the shadows, but they don't all work in them. The Migration Policy Institute, an independent think tank in Washington, reports that at least half the seven million thought to be illegally employed have aboveground bosses who check credentials and fill out forms, deduct taxes and pay Social Security.

Of the hotel industry's 1.5 million employees, 150,000 aren't supposed to be here, according to statistics gathered by the Pew Hispanic Center. In food manufacturing, also with 1.5 million, 210,000 have no right to work. Landscaping, Mr. Penry's line, has 1.2 million workers, 300,000 of them illegally in the country.

"Most of the undocumented workers in America are working for good, reputable, law-abiding employers," he says.

In 1986, Congress compromised on an immigration bill that gave legal residence to three million foreign workers while giving the federal government greater powers to police work sites. Since then, employers have been asked to inspect an assortment of documents from job applicants as proof of work authorization, but, apart from blatant forgeries, they aren't expected to be judges of authenticity.

Even in such businesses as roofing, where one in three workers is thought to be undocumented, "don't know" is the standard answer employers give when asked if any illegals are on their payrolls.

"I wouldn't be telling the truth if I tried to say that I'm 100% sure that everybody we have is documented," says Rick Birkman, a commercial-roofing contractor in Austin, Texas. "Is there plausible deniability in what we do? Sure, there is."

Employers say it is possible to ask too many questions, leading job seekers with the proper documents to feel as if they are being unfairly targeted because of their ethnicity. They say the rules were written that way to mollify civil-rights groups.

But others say the law gave bosses an intentional out. Adopted during the antiregulation Reagan years, it was nevertheless the biggest leap in work-site monitoring since the Occupational Health and Safety Administration was created 15 years earlier.

The rules were further eased in recent years. Inspectors now need written permission from supervisors before entering a work site. Employers get credit for "good faith attempts" to live up to the law. Since 1996, when the focus of enforcement began to move away from work sites to the borders, the number of fines collected have dropped to nearly zero from a high of about 8,000.

What crystallized the business lobby's support for immigration reform today wasn't fear of enforcement; it was fear of losing workers. Its argument is for a new system that maintains the work force and also allows an employee's status to be authenticated instantly, with something like a swipe card at a grocery store.

The outpouring of illegal workers that continued yesterday didn't bring many bosses onto the streets. But Dave Penry is thinking about it.

Ten years ago, when the landscaper had 250 employees, a raid cost him more than 50 of them. "A couple of those men named their kids after me," he says. Now, he feels the atmosphere of protest "is strangely familiar to the '60s and '70s, when it was all about Vietnam."

"Sure employers are running scared," says Mr. Penry. "But a lot of Hispanics have helped my company become successful. It was time for an employer to stand up." That is why he went on television. And why, on May 5 – the Cinco de Mayo holiday – he has given his workers a day off for a protest "to show America how important they are."

"I'm willing to go march with these guys," he says. "These men are my family. We owe them something. We owe them the good fight."

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