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"Important Immigration Considerations: Entry by the INS on Company Premises" by Kent J. Pagel & Bartt G. Thompson

By now, most truss manufacturers know that, with respect to new hires, they are required to comply with the Immigration and Nationality Act. Previously we have warmly referred to this group of federal laws as the "Act."

As discussed in our article in the March issue of *WOODWORDS* entitled "[Immigration Aspects of New Hires](#)," legal compliance with the Act is not difficult. It takes an understanding, some training and very little money to comply. It is not the employer's job to ferret out illegal aliens; instead strict compliance with the legal requirements and some common sense are all that is required. If the Act's requirements are ignored, the company could face an adverse action on the part of the Immigration and Naturalization Service (commonly referred to as the INS) and be subject to fines.

The Act also prohibits companies (who employ more than three employees) from discriminating against any individual, other than an unauthorized alien, in the hiring or discharging of an individual because of the individual's national origin. In the event of such violations, an employer could face a complaint filed by the EEOC or a private lawsuit by an individual or group of company employees.

Companies that choose to blatantly ignore the Act may become subject to a vigorous INS prosecution. Recently a major metropolitan area business journal reported a record \$1.75 million fine assessed by the INS against a restaurant chain for "shielding, concealing, and harboring illegal aliens." Applauding the fine, the U.S. Attorney's office reported: "If you can't take the heat of prosecution, get your unauthorized workers out of the kitchen or any part of the workplace."

Even the most law abiding company may face an entry by the INS or the U.S. Department of Labor without advanced notice when there is sufficient cause to believe that there are persons who have presented to an employer fraudulent identity documents. An entry without advanced notice does not mean the employer has violated the law. Instead the INS believes that entry without advanced notice ensures that any unauthorized aliens employed by the company do not prematurely learn of the INS entry. Entries by the INS without advanced notice are not common, but many truss manufacturers have undergone this process.

When an INS entry (often called a raid) occurs, most companies are ill-prepared to respond appropriately to the search and to handle the necessary coordination and communication with the INS, the media and internally as a company. Take the time for your company to be prepared to handle an INS entry by considering the following steps. These steps, perhaps combined with

some others, could possibly serve as your company's policy in the event of an INS entry:

- Verify the legitimacy of the application made by the INS to the federal court for the order of entry.
- Identify the INS agents from intermeddlers such as the media.
- Prohibit entry by or at least isolate the media.
- Designate one person from management for handling all communications with the INS, the media, company personnel and company legal counsel.
- Consider issuing a press release or providing an interview, as the media will usually report on INS raids.
- Verify any company employees detained by the INS as subject to deportation.
- Evaluate the need to conduct a meeting of the company employees, the impact on customer deliveries and manufacturing capacity, and the need to cancel employee vacations.

In contrast to an INS entry or raid, your company may receive a written notice in advance from the INS office to inspect your company's Form I-9s. In the event of such advanced notice, a company should consider the following action:

- Make the original Form I-9s available to the INS officers—provide an employee list with start dates as Form I-9s must be retained until the later of 3 years after the date of hire, or 1 year after the date the employee's employment is terminated.
- Provide only such other information as may be legitimately requested by INS.
- Consider announcing to company employees the INS request to inspect records and that INS officers will be on the company premises ONLY for the purpose of conducting the inspection. Do this as a way to minimize employee conjecture and concern.
- Designate one spokesman/coordinator from management to communicate with the INS concerning the inspection, to coordinate company compliance with the inspection, and to report to other company managers and company legal counsel if necessary.

The impact on your company for non-compliance with immigration law requirements can be significant depending on your degree of non-compliance. Potentially, material non-compliance could result in penalties that could impact your company for a long time. In comparison, the impact of an INS entry or inspection can be minimal and quite short in duration if you take the time now to implement a common sense approach that incorporates some of the above suggestions.

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