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Immigration Reform, Payroll Fraud and Misclassification

Quality Construction Alliance Position:

The QCA promotes immigration reform that supports lawful employers and solves the problem of undocumented workers in order to level the playing field for companies that abide by the law. The QCA also supports a fair and efficient worker verification system such as E-verify and would support a requirement that businesses E-verify individuals contracted as independent contractors. However, reform should not impose vicarious liability on contractors by separate employers or lower tier contracting parties. QCA opposes an expanded guest worker program for skilled trades and additionally supports strict controls in the program to avoid guest workers admitted for low skilled classifications from migrating to construction. Additionally, QCA supports flexibility in Administration programs to deal with skilled workforce shortages in the future.

The Issue:

On April, 16, 2013, the Senate Gang of Eight released its legislative reform proposal (S. 744) for comprehensive reform, and the basic elements of their proposal are:

- **Secures the border** – The bill requires the Department of Homeland Security to create and implement a plan to monitor 100% of the southwest border with Mexico and intercept 90% of people trying to illegally cross into it;
- **Path to Citizenship** – Allows unauthorized immigrants who were in the U.S. before December 31, 2011, to apply for temporary legal status. After ten years, most of them could apply for a green card. Three years later, they could apply to become U.S. Citizens;
- **E-Verify** – Requires that all U.S. business owners use a program that checks the immigration status of new employees within five years to ensure that they are not hiring unauthorized immigrants; and
- **Immigration Overhaul** – Overhauls the legal immigration system by reducing some visas for relatives of U.S. citizens, while expanding the number of visas for immigrants who specialize in science, technology, math, and engineering or in other low-skilled areas.



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The Problem:

Employers that employ illegal workers, or misclassify illegal workers as independent contractors, erode the market position of legally compliant firms, transfer uncompensated emergency room health care costs onto responsible employer health plans and otherwise displace legal and underutilized workers in the economy. The employment documentation system is also in dire need of reform, and only exacerbates these problems by making it easier for those employers who game the system. The number of employers in all industries that willingly exploit these loopholes is long, but nowhere more pronounced than in the construction industry. The lack of Congressional action have lead to rampant degradation of workforce standards in the construction industry. The effects of illegal employment and worker misclassification have combined to significantly erode industry workforce pay, benefits and training standards, to the detriment of the competitive position of responsible law abiding employers, their benefits plans, and adverse impacts on community standards and law abiding taxpayers.

The Solution:

1. Workforce documentation - E-Verify of any similar workforce documentation/credentialing system is essential to an effective enforcement scheme against those employing undocumented workers or using misclassified undocumented workers as bogus independent contractors. Those who abuse undocumented workers or misclassification of employees as independent contractors have much more to fear from E-Verify than responsible employers who adhere to local, state and Federal labor and employment laws. Still, QCA will urge policy makers to refrain from imposing anything like vicarious liability on contractors from independent violations by separate employers or lower tier contracting parties. QCA also will support a requirement that employers also E-Verify those individual they would contract with as independent contractors. .

2. Crackdown on employers who have exploited undocumented workers in the past – As the reform may well include some path toward regular status or even citizenship for formerly undocumented workers, requiring an assessment and reparation for past tax avoidance and criminal background checks – then similarly, QCA policy would require that employers that have exploited those undocumented workers in the past either through employment tax avoidance or independent contractor misclassification also make amends and pay unpaid taxes for those violations.





3. Prevent any guest worker program from compounding workforce standard abuses in the future - QCA also supports reform elements that would curb any expanded guest worker program for skilled trades and to prevent employer abuse or lax entry standards from further compromising domestic workforce standards. QCA favors use of an independent and expert panel to administer any guest worker program, with safeguards for domestic workforce payment standards, and to guard against guest workers from migrating to domestic employment for other than permitted work. There should be strict controls against guest workers admitted for low-skilled work classifications, agriculture for instance, from migrating to work in other industries like construction. QCA support a specific carve out for skilled construction craft workers from the guest worker program; but QCA also supports allowing flexibility in administration in the event intractable skilled workforce shortages should recur in the future as they did in the late 1990's. Specific wage and benefit industry standards, by industry and locality should be imposed on any guest worker employer for any definite period of employment of permitted guest workers

4. Protect the underutilized domestic workforce -- Provide competitive safeguards for responsible employers that employ affirmative action to employ the underutilized domestic workforce against unfair competitive advantages from employers who may over utilize any guest worker program. Comprehensive immigration reform policy must reconcile the cross purposes that a guest worker program presents for national policies promoting equal employment opportunities and affirmative action for the underutilized domestic workforce.

Status:

S. 744, Border Security, Economic Opportunity, and Immigration Modernization Act, introduced by Sen. Charles Schumer [D-NY], was referred to The Senate Judiciary Committee on April 16, 2013. S. 744 is pending Senate Committee hearings.

S. 744 Co-Sponsors

Bennet, Michael [D-CO]; Durbin, Richard [D-IL]; Flake, Jeff [R-AZ]; Graham, Lindsey [R-SC]; McCain, John [R-AZ]; Menéndez, Robert "Bob" [D-NJ]; and Rubio, Marco [R-FL]

