

States balk at checking farm workers' documents

By SHANNON DININNY
Associated Press Writer

GLEED, WASH. -- Some states are balking at a federal effort to require them to screen potential farm hands for immigration violations before referring them to jobs, another conflict in the long-running dispute over the states' role in immigration enforcement.

[U.S. Department of Labor Employment & Training Administration](#)

Most resent a new rule that didn't come with money to pay for the extra work. Some complain they can't work with the federal verification system. Still others argue that the requirement illegally targets a certain class of workers.

Everyone's unspoken concern: That weeding out illegal workers could leave crops to rot in the fields.

Farm worker advocates support states' refusal to crack down, fearing legal U.S. workers could be denied employment in the process. Agriculture groups, some of whom sought the change, say farmers and food packers shouldn't bear the brunt of the task.

"I just wish they could work something out so that we're not all caught in the middle," said Mike Stephens, owner of MacKenzie Farms, an aspen nursery east of Washington's Cascade range.

Some 1 million people labor in U.S. fields, an estimated 70 percent of them in the country illegally. Their farm employers assume responsibility for screening workers' immigration documents and submitting an I-9 form to the federal government. Often, though, any problems with their documents are discovered after the harvest, long after workers have moved on to new jobs.

No one gets fined or arrested, and the crops come in on time.

But a rising federal crackdown on immigration violations is leading to worker shortages nationwide. Farmers say they fear hefty fines for employing illegal workers, and more are turning to a federal guest-worker program despite long-standing complaints that it's too cumbersome.

The H-2A program allows farmers to recruit workers from foreign countries if they can prove a shortage of legal, local workers exists. Similar programs exist for the hospitality and high-tech industries who struggle to find workers.

The role of state work force offices is to advertise jobs locally and refer workers to the employers, in order to prove whether a worker shortage exists.

At the request of some farm groups, the department notified state work force agencies in November that they must verify local farm workers' documents before referring them to the fields for work. The reminder was sent only in the form of a "guidance letter," but Labor Department officials say they expect states to comply, either by submitting an I-9 form themselves or by confirming immigration status with a federal computer system known as e-verify.

Some states immediately recoiled from the proposal, citing their shrinking budgets, burgeoning workloads and the potential for discrimination lawsuits.

"U.S. farm workers seeking H-2A jobs, especially Latino workers as a class, would face greater burdens to obtain these jobs than any other workers," Dolores Esser, commissioner of Virginia's Employment Commission, wrote to the Labor Department.

Initially, the Labor Department only singled out potential farm employees for the extra scrutiny. The department proposed similar requirements for non-agricultural, generally seasonal workers, in May.

States also raised concerns about e-verify, which has faced criticism as being riddled with errors.

Following the letter's instructions could run afoul of a federal law saying that e-verify results cannot be used as a prerequisite for employment, said Curt Eysink, spokesman for Louisiana's Labor Department.

U.S. farmers hired only about 77,000 foreign workers through the guest-worker program last year, though that number is expected to rise. Nearly 70 percent of the farmers and food packers who sought guest-workers came from just 12 states.

The Labor Department depends on all state work force offices to perform certain tasks, and one is to verify employment eligibility of workers coming into the program, said Jennifer Kaplan, a Labor Department spokeswoman.

"The department believes that as state work force agencies get more information about what their legal obligations are, and the options that are available to them to comply, they will agree to come into compliance," Kaplan said.

But Kaplan also said Labor has a number of tools to force states to comply if they refuse, and that "the department is prepared to use them when and if it becomes necessary." She declined to elaborate.

An Associated Press survey found that just four of the 12 leading states had committed to meeting the new requirement by March, four months after the letter. Those states were Texas, Montana, Kentucky and Tennessee, though the latter two also said they disagree with it.

Several more - Utah, Virginia and Louisiana - have reluctantly signed on since, the latter two because the Labor Department threatened to cut money for their offices.

"Quite frankly, in our discussions, we just concluded that the risk of jeopardizing the program through loss of funding was greater than the risk of potential litigation for complying," said Coleman Walsh, administrative law judge for the Virginia Employment Commission, which recently laid off 157 staff members and abolished vacant jobs due to money woes.

Officials in North Carolina and New York, and Colorado, after asking the state attorney