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Hiring Is Very Hard for Restaurants These Days. Now They May Have to Fire.

Amid a severe labor shortage and a renewed U.S. crackdown on undocumented immigrants, owners are facing a choice: fire workers or risk prosecution.

By David Yaffe-Bellany

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Facing one of the most severe labor shortages in decades, restaurants across the country are trying virtually everything to recruit cooks and dishwashers, from offering quarterly bonuses to providing training programs for ex-convicts.

Now, the specter of increased immigration enforcement is putting many of those restaurants in a more fraught situation: let go of trusted employees or risk criminal prosecution.

The problems began in March and April, when the Social Security Administration sent letters to hundreds of thousands of business owners, notifying them that the names of some employees did not match the Social Security numbers on their tax forms.

These “no-match letters” sowed fear and confusion in workplaces that depend on immigrant employees, like farms, factories and construction sites. But few businesses have felt the impact of the government notices more than restaurants, which have long relied on undocumented labor and struggled with high turnover.

“If you ask any restaurant now what’s keeping them up at night, it’s this,” said Carolyn Richmond, an employment lawyer in New York. “We do have a lot more diverse work force than most industries, and unfortunately many of them may be undocumented.”

Over the last few months, the restaurant owners who received no-match letters have divided into two general camps. Some risk-averse employers are planning to fire their undocumented workers or adopt more stringent hiring protocols, like using the federal E-Verify program to check new hires’ documents. Others have done practically nothing, convinced that they have no choice but to ignore the notices because they can ill afford to lose employees in a tight labor market.

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After the no-match letters arrived, many restaurant owners were advised by their lawyers to give affected employees a few months to correct the problems in the government’s records.

For some restaurants, the end of that window has already arrived or is fast approaching. That could mean a wave of firings is in store, once it becomes clear that certain employees lack legal status. But with restaurants already struggling to hire enough workers, some owners are likely to ignore the letters, putting themselves at risk of legal penalties.

“We’ve definitely seen every part of the spectrum, from wanting to be compliant to ‘we’re just going to stick our heads in the sand,’” said Becki Young, a lawyer in Maryland who has advised restaurants across the country on how to respond to the no-match letters. “Some of our clients will have some really hard decisions to make.”

A no-match letter from the Social Security Administration is not the same as an immigration audit, which would be conducted by Immigration and Customs Enforcement. And some of the Social Security discrepancies involve minor clerical issues, like a missing digit or a spelling mistake in an employee’s name.

“Social Security is not a law enforcement agency,” said Mark Hinkle, the agency’s acting press secretary. “Our role is limited in scope to trying to ensure we credit each employee with his or her earnings.”

But the letters effectively require business owners to check whether the employees identified are properly documented. And in a potential ICE audit, employers who fail to investigate a no-match letter — or to act on what they find — could be deemed to have “constructive knowledge” of an employee’s immigration status, exposing them to hefty fines and possible criminal charges.

The last time the federal government sent a large number of no-match letters was more than a decade ago, when President George W. Bush was in office. Amid a broader crackdown on illegal immigration, the Trump administration has revived the process, at the same time that ICE has upped the frequency of its audits. In fiscal 2018, the agency initiated nearly 6,000 I-9 audits, a more than 400 percent increase from the previous year. And the ICE raids in Mississippi this month, which swept up hundreds of undocumented employees at agricultural plants, underscored the specter of increased enforcement across the food industry.

The experiences of two restaurant owners in New York City show how the pressures that face the industry have elicited strikingly divergent responses. The owners spoke on condition of anonymity because they did not want to attract attention from ICE.

One of them, who owns a restaurant group with locations in New York and Miami, said he had consulted with five different law firms about how to respond to the no-match letters, which he said named 350 of his employees, or about a quarter of his staff. At the advice of several of those lawyers, he said, he is considering firing employees who cannot produce documentation. He has also hired a company to inspect the I-9 forms of all future employees.

Over the past few months, a number of his employees have left of their own accord, he said, concerned that the no-match letters could portend a federal immigration raid.

The second owner, whose restaurant is in Manhattan, said she received a no-match letter alerting her to issues with almost every member of her kitchen staff, many of whom she had suspected were in the country illegally. Ultimately, she said, she decided not to tell any of her employees about the letter because losing the workers would doom the establishment.

With unemployment at just 3.7 percent, its lowest level in many years, restaurants are hardly the only businesses struggling to recruit low-wage workers. But for them the labor shortage has become especially serious: Restaurants have long been the economy’s largest employer of teenagers, whose participation in the work force has declined in recent years; and Wall Street investment has led to a glut of restaurant openings, oversaturating the market.

Many of the restaurant owners wringing their hands over the no-match letters run local eateries or small to midsize restaurant groups. The larger fast-food chains often require that their stores or franchisees use E-Verify, making them less likely to violate immigration law.

Chipotle adopted the verification system after an immigration probe in 2011 cut its work force in Minnesota in half. And over the last year, Dunkin’ has taken an especially hard line, suing franchisees that failed to use E-Verify.

“You might start seeing more franchisers perhaps tightening up their employment verification requirements,” said Vikrant Advani, a labor expert at Rutgers University’s business school. “I see that possibly becoming a trend. Franchisers have to be careful.”

At the moment, 22 states mandate that at least some businesses use E-Verify. It’s unclear, however, how many restaurants have adopted the system. United States Citizenship and Immigration Services, the agency that oversees E-Verify, records the number of “food services and drinking places” that use it, but the agency does not keep track of restaurants specifically.

In the last three years, the number of food-and-drink locations using E-Verify has increased steadily, by about 20,000 to 25,000 a year; a total of 218,375 such locations have signed up over the history of the program, according to government data. And even in some states that do not require it, E-Verify is growing more popular. In Iowa, the local chapter of the National Restaurant Association has not heard any reports of no-match letters, possibly because so many restaurants in the state already use E-Verify, according to Jessica Dunker, the chapter’s president.

In New York, many small, independent restaurants have been reluctant to adopt the system because it can slow down the hiring process, putting employers at a competitive disadvantage. But now, some owners are starting to reconsider, as they wrestle with what to do about the no-match letters.

“There’s a lot of liability for employers, so it puts them in a very difficult position to make very difficult choices,” said Andrew Rigie, the executive director of the city’s hospitality alliance. “Immigrants are the backbone of the city’s restaurant industry. There’s an incredible amount of anxiety.”

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