



11th Circuit Hints at Potential Criminal Sanctions against Employers for Immigration Violations

FEES AND BURGESS, P.C.,
Emphasizes:

In a recent case from the 11th Circuit Court of Appeals (covering Alabama), the court reversed a trial court decision and determined that a defendant-employer could be liable under racketeering laws regarding its hiring of employees who were not authorized to work in the United States. The breadth of the court's decision also allows for potential criminal violations for similar activities in the future. The case discussed allegations by plaintiffs who were former employees of Ruth's Chris Steak House, and who alleged that the company provided names and social security numbers to illegal aliens so that they could work with the company. Furthermore, plaintiffs alleged that the company did not complete I-9 forms in the 3-day period required by federal law, and that the company retaliated against employees who complained about these various activities. Plaintiffs alleged that these immigration violations constituted racketeering activity in that the company operated a "criminal enterprise to violate federal immigration laws."

In reviewing the racketeering claims, the court notes that plaintiff must establish a "pattern of racketeering activity." Racketeering activity includes violations of the Immigration and Nationality Act (Act), and to recover under the racketeering law, plaintiffs must prove that defendant-employer engaged in at least two wrongful activities under the Act. Specifically, plaintiffs alleged that defendant Ruth's Chris knowingly hired illegal aliens, encouraged illegal aliens to live in the United States, and "concealed, harbored, or shielded" such aliens from detection in contravention of the Act. In reviewing the various theories submitted by plaintiffs, the court mentions legislative history surrounding applicable laws, and it indicates that the knowing hiring of illegal aliens could fall within the definition of "concealing, harboring, or shielding" illegal aliens. While the court does not expressly state this as law in its decision, the court implies that it could do so in the future. With this non-binding statement, the court implies that the act of knowingly hiring illegal aliens, with no other allegations of wrongdoing, may be sufficient to subject an employer to liability under federal racketeering laws. More importantly, concealing, harboring, or shielding illegal aliens is not only a violation of civil laws, but it is also a felony under U.S. criminal laws. Accordingly, this court's decision could trigger significant criminal sanctions for employers who knowingly hire illegal aliens.

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This court decision is not the end of the applicable case, which must still proceed to trial or eventual settlement. However, the implications of the court's broad language should be a strong warning to employers. Not only is there significant civil exposure for hiring employees, who are not authorized to work in the U.S., but there is potential criminal liability as well.

The case is Edwards v. Prime, Inc., 602 F.3d 1276 (11th Cir. 2010).

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- Conflict Management/Grievances
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