

Senate Amendment Establishes Ten Year Debarment for Contractors Hiring Illegal Immigrants

On January 25, 2007, the Senate unanimously agreed to amend the highly publicized Minimum Wage Bill (H.R.2) to include language that would require the debarment of any federal contractor found to employ illegal immigrants in violation of the Immigration and Nationality Act. The amendment sets the debarment period at an unprecedented ten years for those employers violating the act while already holding an active government contract, and at seven years for prospective government contractors found to violate the act while not holding any government contracts.

While the amendment contains an exemption from debarment, it is limited to those contractors participating in the "Basic Pilot Program", the government's electronic verification system for worker eligibility established under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, at the time of the employment violation. Further, a waiver of debarment or a limitation of the debarment scope or duration may be granted (by the head of GSA) only in situations where it is necessary to protect national defense or security interests. Finally, the amendment prohibits judicial review of any debarment decision made under its authority.

Both the length and nature of potential ten or seven year debarments has sparked considerable concern among service contractors who often have limited resources or abilities to combat fraudulent documentation from illegal workers. These contractors and other concerned industry members are closely watching the Senate, which is scheduled to vote on this amended version of H.R. 2 this week. If passed, these provisions contained in the Senate bill would have to be reconciled with the House's recently passed Minimum Wage Bill that did not include similar provisions.

While this legislation may seem too extreme to be seriously considered in a minimum wage bill, immigration politics in Washington is very unpredictable. The last Congress authorized a 700-mile long wall between the US and Mexico to keep out illegal aliens. This year, with a new Congress, there is a renewed focus on targeting the employers – the theory being that if they can make it too scary and painful to hire (or even risk hiring) illegal aliens, then the job market will evaporate and the illegal aliens will stay home. The current Congress has demonstrated a willingness to target large defense contractors, as evidenced by the recent increase in Congressional oversight and investigations. There may be enough Republicans who will join with Democrats and other legislators who will not want to appear to be coddling employers who hire illegal aliens to pass this legislation.

There is a lot of pressure in Washington to get a Minimum Wage bill passed this year regardless of what extraneous provisions may be attached, but this legislation would significantly impair the ability of the executive agencies to monitor and control companies. In the past, executive agency debarment and suspension officials have opposed legislation imposing mandatory debarments as, in fact, detrimental to the government's interests and ability to impose and administer controls on companies doing business with the government. It remains to be seen whether their views will once again be heeded.

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