

Bring Us Your Skilled Hard Workers, With Papers

By Peter Eisenhauer



In considering the options for filling the ranks of the construction industry workforce, it doesn't take long to come around to the question of immigration. Immigrants built this country originally, and whether they came to the United States from across the Atlantic or Pacific Ocean or across the Rio Grande River, their labor has been key to all great expansions of United States infrastructure. That remains true today. At the same time, while the construction industry, among others, is reliant on immigrant labor, the current immigration system is contributing to the wider problems of the construction industry in attracting and sustaining an adequate, quality skilled workforce.

Associated Builders and Contractors (ABC) frames the issues this way: "According to the Bureau of Labor Statistics, the construction industry is expected to need about 1.6 million new workers by 2022. In order to meet U.S. construction demand, there must be a way for the industry to legally supplement its workforce when there are not a sufficient number of willing or able American workers." The trade association, among others, advocates for immigration reform that will make it possible to meet that demand.

The current situation is far from ideal for either the employers or the foreign-born workers in the industry. A major study of immigrant labor in the construction industry in Texas found a situation leading to an unsustainable 'race to the bottom' in terms of work quality, job safety and employment practices. The Austin-based Workers Defense Project (WDP) and the University of Texas at Austin Division of Diversity and Community Engagement concluded in "Build a Better Texas" that "current immigration policy is failing the construction industry." The report holds that businesses should be able to hire the hardworking men and women they need legally in order to address the labor shortage brought on by factors including the aging construction workforce. Realistic and practical policies are also needed so that responsible businesses can fairly compete against those who abuse the current system.

That is also the position of many trade groups, such as the ABC, which says, "current immigration laws do not provide an adequate amount of legal immigration to respond to the future economic demands of the construction industry."

The WDP study found that about 70 percent of the Texas construction workforce is foreign born. About 20 percent are naturalized citizens, legal residents or visa workers. The rest, a full 50 percent of the workers in the construction industry in Texas, are undocumented.

It is a dramatic number, meaning that there are over 300,000 undocumented construction workers in the state.

The undocumented workers face many difficulties. The report notes that as "federal immigration policy denies them the right to work legally, forcing them into an underground economy where low pay, dangerous working conditions, and illegal practices are rampant."

These issues are detailed in the study, which found that undocumented workers, on average, earn \$3.12 less per hour than workers who are citizens, and were the only workers found to be earning wages below the legal minimum wage; that one in four reported being cheated of wages; the undocumented workers were significantly less likely to be granted rest breaks, even in extreme temperatures, and were 33 percent less likely to have received basic safety training.

Many industry sources point to the issue of misclassification of workers as 1099 contractors, rather than employees as a large factor in the problems with undocumented workers. According to the Texas Contractors Association, "contractors should be required to properly classify an individual performing construction services, whether as an employee or independent contractor, and there should be strong penalties for non-compliance." Mike Holland, Division President for Marek Houston, who has served as President of the Houston Chapter of the American Subcontractors Association (ASA), and is a past member of the Associated General Contractors Houston Board of Directors, also summarized the situation. Holland writes that "the once valued partnership between employer and worker has been replaced by the hiring of independent 1099 contractors, 'pieceworkers' and temporary staffing companies. In response to owners demanding lower prices, general contractors and specialty contractors alike have largely become 'brokers' of the construction process, using contracts and questionable employment arrangements to manage labor on construction sites."

In a letter to the Texas House Committee on Business and Industry, which recently conducted hearings on the issue, Michael E. Beeter, Owner and President, BRI Roofing in Fort Worth detailed the costs to competitors and society from the rampant practice of misclassification, and the lack of accountability in the industry. Misclassification is a means to evade payroll tax obligations and also absolves project owners from verifying the immigration status of workers on site.

"Since 2012, our company has been an E-Verify participating company," wrote Beeter. "Unfortunately and as a result of our own convictions, we are losing work every day where the buyers could care

less about 'who' is doing the work or if they are in compliance by having legitimate workers compensation insurance."

So what should be done? There is a consensus that there needs to be immigration reform at the federal level. The WDP report calls for a pathway to citizenship for undocumented workers in the industry.

"Immigration reform is necessary to protect the rights of all workers by ensuring that they are afforded equal protections and are not afraid to step forward when facing dangerous and illegal working conditions. Furthermore, construction companies must be able to hire their workforce legally to ensure that all companies are operating on a level playing field."

ASA lists these immigration reform priorities: address future economic needs for workers through the creation of a guest worker program; practically address undocumented workers already in the United States; provide a reliable and effective system to verify employment eligibility. ASA also advocates a mechanism to allow hard working, tax paying undocumented workers to earn legal status.

ABC also supports the idea of a guest worker program as well as safe harbor provisions for employers that act in good faith while using employment verification (E-Verify) to verify employees; federal preemption of state and local E-Verify laws; a more streamlined, efficient and legally sound pathway to citizenship.

The various groups all concur that action on a federal level is key. As ASA says, "The delay on federal comprehensive reform has led to a complicated immigration policy landscape. Numerous state and local governments have implemented a patchwork of confusing, arbitrary and sometimes draconian laws. "Many point to the experience of Georgia, which experienced severe labor shortages in the agricultural sector after passing a strict immigration enforcement law.

Fair treatment of immigrant workers, as noted in the WDP report, is key to the future of construction. The low wages, dangerous conditions, few benefits, and lack of training that characterize conditions for undocumented workers are the very elements that make construction a less desirable career path than other sectors. On the other hand, the report notes, "By bringing the current workforce out of the shadows, opening access to formal training, and improving the employment standards across the whole industry, comprehensive immigration reform has the power to transform the national construction industry and improve outcomes for workers, businesses, and local economies across the country" ♦