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Immigration fight moves to workplace

Plaintiffs seek class-action status against carpet giant Mohawk

By [SHELIA M. POOLE](#), [TAMMY JOYNER](#)

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**Calhoun** — On a recent afternoon, four young Latino men stroll into a temporary help agency looking for work in the carpet mills.

They had heard that "Georgia has good jobs," said Wilder Reyes, a 19-year-old native of Chiapas, Mexico.

Not far away in the parking lot of a Ruby Tuesday, Emile Austin, his brother and cousin fill out applications, hoping restaurant work pays better than carpet jobs. Austin once worked at flooring giant Mohawk Industries making about \$7 an hour.

He buys into the talk about how the influx of immigrants into the mills keeps wages relatively low in Gordon County, home of Mohawk. Last year, Mohawk had sales of nearly \$8 billion and earned more than \$450 million.

While at Mohawk, Austin says he noticed there were "definitely more Mexicans and Guatemalans than blacks and whites." And many, he believes, were here illegally. A good number didn't speak or write English.

"It's very hard to find a job when you can hire [illegal immigrants] and pay them cheaper wages," Austin said.

Such assertions have put Mohawk at the center of one of the nation's most contentious debates: illegal immigration.

Three years ago, a group of current and former Mohawk workers sued, alleging the company recruited, hired and harbored illegal immigrants. Plaintiffs' attorneys are seeking class-action status for the case.

"The allegations are not true," said Frank Boykin, Mohawk's chief financial officer. "And we will defend it aggressively."

In the three years since Mohawk workers took the carpet giant to court, illegal immigration has become a hotter political issue. The federal government has stepped up enforcement of immigration laws, and U.S. businesses are dealing with complexities of a law that's still being hashed out in Congress.

The case against Mohawk drew national attention because the workers' attorneys relied on a law largely used by the federal government to go after organized criminal activity. The government has used Racketeer Influenced and Corrupt Organizations — or RICO — to help put New York mob boss John Gotti behind bars and to tangle with Big Tobacco.

Now RICO is being used in civil cases to go after employers who hire illegal immigrants. The penalty is

three times the amount of the original damages.

Other RICO cases are winding their way through court. The most notable: Colorado meat processor Swift & Co.

Eighteen former employers sued Swift & Co., contending the company knowingly manipulated and depressed wages by hiring illegal workers. The lawsuit alleges the company and other defendants engaged in racketeering activity that included transporting, smuggling, harboring and concealing illegal immigrants.

Swift denies the charges. The company, which also was the target of immigration raids on several of its facilities, said it has participated in the Basic Pilot program for nearly a decade. The program allows employers to verify the eligibility of prospective workers.

"The hiring landscape is filled with mine fields as labor law and immigration law have competing interests," said Swift spokesman Sean McHugh.

### **Arrests more common**

While President Bush and Congress hammer out a compromise on the fate of millions of undocumented workers, businesses face tougher federal scrutiny, raids and audits. Some states are also getting tough on employers that hire illegal workers, with measures that could result in the loss of their business licenses.

At the federal level, the U.S. Immigration & Customs Enforcement agency (ICE) is aggressively going after businesses that employ illegal immigrants. There's also coordination between ICE and other government agencies such as the Social Security Administration to find violators.

"We want to make employers less likely to hire these people," said ICE spokesman Richard Rocha. "We're targeting the lure that brings people into this country."

Rocha said federal immigration officials, instead of solely levying administrative fines — which some companies just build into their bottom line "as the cost of doing business" — are using criminal arrests to make their point.

Atlanta attorney Joyce Fleming began noticing the tougher stance during the last year.

"There's a complete shift of focus at the federal level to a much more punitive enforcement to penalize companies who hire undocumented workers," said Fleming, a partner who manages the immigration practice at Ford & Harrison.

Teri Simmons, an attorney with Arnall Golden Gregory, got a frantic call from a client one Friday afternoon a few weeks ago. The software company was told to expect a visit from federal immigration officials within a few days.

"I just started pulling files [in preparation]," Simmons recalled. "This compliance officer doesn't sort of come in with a gun, but he may call on Friday and say, 'I'd like to do an audit on Monday.' So it feels much like a raid."

The clampdown has created fear and confusion among employers.

"Suddenly everybody's looking around and seeing companies being raided, charged and fined [and wondering] whether they are in compliance," said Simmons, who directs the immigration practice at Arnall

Golden Gregory. "It's happening all over Atlanta right now."

Georgia employers may face an additional set of hurdles, beginning in July.

The Georgia Security and Immigration Compliance Act — also known as SB 529 — is a sweeping law that, in part, requires governments to verify the eligibility for newly hired employees and, starting next year, bars employers from claiming wages of illegal immigrants on state income taxes.

Georgia has one of the fastest-growing illegal immigrant populations in the country. The Pew Hispanic Center and the U.S. Department of Homeland Security estimate Georgia's undocumented immigrant population is approaching half a million.

### **'Very complicated'**

In the past, there was little attention paid to workplace enforcement. Instead, the federal government focused on identifying and deporting illegal immigrants charged with a crime, said Daniel Kanstroom, a professor of law and director of the human rights program at Boston College's law school.

Today, so many illegal immigrants work in the United States and so many companies depend on them that workplace enforcement is a complex and daunting prospect, he said.

"You have 12 to 15 million undocumented immigrants and virtually all of them are working," he said.

"And there are lots and lots of employers still willing to hire them ranging from big companies to the many smaller companies to nannies in the community. People rely on them. They care about them. It's a very complicated problem."

### **Documents a problem**

Alpharetta businessman Micah Ray said he tries not to hire illegal immigrants. His company, Champion Distinctive Landscaping Design & Care, hires workers with H2B visas. That visa lets a foreign national work here temporarily or on a seasonal basis. Ray also requires workers to have Social Security cards and another type of identification. And that can pose problems.

"If someone who applies for a job is Hispanic, it's really hard to question them closely about that," said Ray, who employs about 15 workers. "You could have a problem with discrimination."

Plus, he said, he's not sure he could spot a fake or stolen ID.

"I'm not trained to do that," he said.

If proper documents are presented to employers, the employer must accept them at "face value" or face charges of unfair hiring practices, Swift spokesman McHugh said.

But companies can face stiff fines later and be criticized if it's determined that an "undocumented worker successfully gained employment through the use of documents that appear facially valid."

According to the lawsuit against Mohawk, the company allegedly accepted driver's licenses and other documents that clearly depicted someone other than the one presenting them. In some cases, according to the suit, an illegal worker would present eligibility papers reflecting one name, work at the company for a time, leave their jobs and later return to Mohawk with an ID showing a different name.

The lawsuit against Mohawk also alleges the company actively recruited illegal immigrants in border towns and transported them to North Georgia to work at Mohawk facilities.

### **'Solid paying jobs'**

In a four-page letter to The Atlanta Journal-Constitution, Mohawk attorney Juan Morillo disputed a number of allegations against the company, including depressing wages.

Morillo noted that Mohawk's 14,000 hourly workers in Georgia are paid, on average, almost \$14 an hour plus comprehensive benefits. The company spends more than \$1.5 billion a year on employee compensation in the United States, he added.

"These are solid paying jobs that everyone wants to keep in America," said Morillo, who also represents the U.S. Chamber of Commerce, which has come out in support of Mohawk and other employers.

Plaintiffs in the lawsuit against Mohawk were unavailable for comment.

But Ronan Doherty, a partner with Bondurant Mixon & Elmore, one of the firms representing workers in the suit against Mohawk, said the office has received a lot of calls from other lawyers and people with complaints against their employers.

"I certainly think this could have a powerful impact," Doherty said.

### **Some want to help**

There's another side to the debate.

"The immigration debate cuts both ways in the workplace," said Tisha Tallman, an attorney and former Southeast regional counsel for the Mexican American Legal Defense and Educational Fund.

"We know there are some employers who are using this climate to their advantage to increase profits," she said. "We also know of employers out there who have become aware some of their workers might be undocumented and they try to find a way to lawfully keep them. For every call we received about exploitation, once in a while we would hear from an employer who would say, 'How can I help my employee get on the path to become a U.S. citizen?'"

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