

Big 10 Farms' Big Problem

Big Ten Farms (BTF) is one of the largest and best-known Big Agriculture Companies in the United States. It is a public company that is across Ohio, Michigan, and Wisconsin. Most of its farms grow apples, blueberries, pumpkins, and sweet cherries. These products must be harvested by hand.

There is a nationwide shortage of willing and available workers to do this labor-intensive work.

BTF's ethics hotline received a whistleblower complaint that some of the workers employed at BTF farms in Ohio are not authorized to work in the US. To facilitate their employment, these individuals are working under stolen identities.

According to the whistleblower, senior managers at these operations know about it. The whistleblower has stated that the managers have assisted these individuals in obtaining false identities to defeat the employment eligibility verification system ("E-verify") operated by the Department of Homeland Security (DHS).

In addition, these managers have arranged for housing and transportation to and from the farms for these workers. The whistleblower explained that the managers knew that these workers lacked valid employment authorization, because all of them previously worked for a BTF contractor. That contractor recently fired them after an external audit of its staff was conducted by Immigration and Customs Enforcement (ICE).

It is mid-July, and the blueberries and sweet cherries are already being harvested. The harvesting of the apples and pumpkins will start in early

September. A review of the Employment Eligibility Verification Forms I-9 for the Ohio operations substantiates the claims, and emails are discovered that suggest (though not conclusively) that the BTF Ohio Farms Division President may have known about the approach.

As far as you know, ICE has not yet been informed of this situation. Potential exposure to Big 10 Farms could include civil penalties for the knowing employment of undocumented workers, as well as criminal penalties for aiding and abetting multiple instances of identity theft, and for transporting and housing undocumented immigrants.

The General Counsel of BTF has retained both outside criminal and immigration counsel. Both recommend that the company approach ICE, disclose the situation and attempt to negotiate a delay in the termination of employment (and possible arrest) of these workers until after the harvest is completed.

The company would also need to agree to provide any evidence of the possible involvement of its managers and knowledge of its Division President. However, there is no guarantee that ICE will agree to such an arrangement, especially given the fact that criminal acts may have been committed by company personnel. Also, it is just as likely that ICE will raid the farms and arrest the workers and relevant managers.

In the alternative, since the company has not been informed that any type of investigation has been initiated by the Government, it could use the next few months to confirm the validity of its initial findings, while the harvest is completed. However, doing so could result in heightened penalties for knowingly continuing to employ undocumented workers, and for the on-going facilitation of criminal activity. Finally, there is virtually no chance that Big 10 Farms could staff the harvest on short notice, and the damage to the company is estimated to be approximately \$15 million in lost revenue.

At the Board meeting, the CEO and General Counsel briefed you on the situation.

The CEO wants the support of the Board.

You are calmly listening to the presentation while wishing you could review your Director & Officer Liability Insurance coverage!