

# ARCHER & GREINER

## ATTORNEYS AT LAW

### *Immigration Client Advisory*

December 3, 2003

#### **The Wal-Mart Scandal: Are Your Workers *and* Sub-Contractors Legal?**

It has been front page news for approximately one month that retail giant Wal-Mart felt the sting of a nationwide U.S.C.I.S./I.N.S. raid on October 23. In addition to the poor publicity, I.N.S. fines and D.O.L. fines that Wal-Mart will surely be levied, they now find themselves as the target defendant in a Federal class action suit, filed by illegal workers.

Originally filed on behalf of nine workers facing deportation in Freehold, NJ, the lawsuit has been amended and re-filed as a class action in Federal Court ([Zavala v. Wal-Mart Corp.](#)), claiming racketeering, violation of a host of tax and labor laws, discrimination and exploitation of foreign workers. Wal-Mart denies fault, and claims that the "employees" were actually independent contractors, who as illegal aliens do not have the right to even file such a suit. A New York class action specialist who amended the suit, fresh off a \$28 million award on behalf of Pepsi drivers, will surely take the lead on behalf of the workers. Meanwhile, the legal community is abuzz regarding the independent contractor defense.

While Wal-Mart receives the most press, this is not the first case of its kind. Following an I.N.S. raid in 1995, a suit filed against Macy's, Hecht's, Filene's, Montgomery Ward, and B.U.M. for similar violations resulted in a confidential settlement paid to illegal workers "in the millions".

Similarly, food retailer Albertson's is currently defending a very similar case in which it is alleged that they have employed and mistreated illegal aliens as janitors in four of their chain supermarkets.

The fact remains that there is no substitute for proper hiring and screening procedures for all of your employees and sub-contractors. Compliance with the law is the one way to avoid these types of fines, penalties and lawsuits. Regardless of their employee or independent contractor status, everyone affiliated with your organization must have valid U.S. work authorization.

For a free consultation or review of your company's compliance with Immigration laws, please contact Gregory J. Palakow, Chairman, Archer & Greiner's Immigration Law Department, 908-788-9700, or by e-mail at [gpalakow@archerlaw.com](mailto:gpalakow@archerlaw.com).

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