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WILL THE REAL LUPE GARZA PLEASE STAND UP?

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BACKGROUND

Lupe Garza lived in a small mid-western town of about 25,000 whose major employer is RW Printing, a printing plant that is part of a large national corporation. The plant employed about 1,500 workers, of whom approximately 100 were temporary workers. Approximately one-third of the 1,500 regular employees were Hispanic, many of whom didn't speak English. Meeting staffing requirements in the manufacturing sector can often be a difficult activity, particularly when the local labor force is limited and staffing requirements are cyclical or sporadic. In a semi-skilled environment a premium must be placed on experienced workers who can operate in specific environments and on specific pieces of equipment. Typically, temporary employment services are used as a way to handle changes in demand without forcing layoffs of regular employees during times when business is reduced. When the decision is made to create a regular position, a temporary position is correspondingly eliminated.

When the manufacturer decided to augment the regular labor force, the temporary workers were often in a position to apply for those jobs, as they have established work records in the plant, were known by supervisors, and possessed the specific equipment skills desired. RW Printing just received a long-term contract; therefore it was essential that the full-time, regular work force be augmented quickly. There was a shortage of workers with the skills required for the positions, so considerable pressure was being put on the HR specialists to fill the posted positions immediately.

Lupe Garza held one of the temporary jobs in the plant, assisting on a machine that binds books together. She had worked there for about three months and had become quite proficient, attracting the attention of her supervisors with her work ethic, clean work record, and positive attitude. The opening for the regular position was posted in the area in which she worked and she applied, since a regular position would give her the stability she needs as a single parent and mother of two small children.

Sarah Jones was a human resources specialist at the plant. As such, she, along with three other HR specialists, were responsible for the hiring process, including interviewing and hiring workers at Lupe Garza's level. Sarah knew Lupe Garza socially, as well as professionally, and told her that her supervisor had written glowing recommendations of her work performance and that she would definitely be hired. In essence, she promised Lupe a regular position. Although Lupe had been offered a full-time position with a different employer, she declined the offer due to her recent conversation with Sarah, as she would much prefer the position at RW for its higher pay and health benefits.

Mark Solomon was another human resources specialist at the plant. As the position interviews were assigned, being divided among the four HR specialists, Mark received the application of Lupe Garza and scheduled an interview with her.

THE SITUATION

Mark Solomon made appointments with his first group of interviewees and several were in the lobby awaiting their interviews. All were currently temporary employees, employed by Miller Staff Services, a local temporary employment contractor.

Mark called the secretary and asked her to send in the next candidate, Lupe Garza. As he waited in the hall for Lupe to appear, he spotted an acquaintance he had known from church and greeted her. “Oh, hello Carmen, are you interviewing here today?”

“Yes,” she replied. “I have an interview with you right now.”

“There must be some mistake. I’m supposed to be interviewing someone else right now, but come in.”

They both sat down and Mark’s puzzled look started the conversation again. “I am Lupe Garza,” the woman said.

“But you’re Carmen Mendoza.”

“Yes, that’s my real name, but at work I go by Lupe Garza.”

Puzzled, Mark asked “But why do you use a different name at work?”

“You see, I am not here legally. We came from Mexico, as you know, and I stayed home with our children while my husband worked. When he left us, I had to go to work. Since I wasn’t legal, I had to borrow someone else’s name and social security number. They are readily available in the local community, so I went to work under a different name.” Lupe then showed Mark her State ID card and Social Security card, which both appeared to be authentic, and the state ID card showed her picture with the name Lupe Garza.

“Your work here has been excellent, and your supervisor gave you excellent recommendations. However, I don’t see any way that we can hire you as a permanent worker now that you have made me aware of your status.”

“My status is well known here in the plant and everyone else has looked the other way. In fact, there are quite a few employees here that are using names that aren’t really theirs. Sarah Jones knows me pretty well and she told me that I would have a regular job if I would just apply.”

Mark engaged in further discussion with Lupe. In the conversation it was revealed that much of the local Hispanic community was, in fact, illegal, but working using the identity of others.

Many of the required employment documents were real, but didn't belong to the actual workers. Rather, they paid others for the use of their legal identities.

As the interview ended, Lupe Garza (Carmen Mendoza) begged Mark for the job, making the case that everything but her name would qualify her: Excellent work recommendations, the proven ability to do the job in a superior manner, and, most of all, immediate availability as she was already working in the plant. Mark told her that she would be hearing from him in a few days. Lupe said she understood, and began crying, saying that if she didn't get the job, she was being punished for being honest. She stated that coming forward to Mark about her identity should warrant her being hired, especially since she had turned down an employment offer from another company, awaiting the job Sarah promised her.

The next Sunday, Mark tried to avoid a direct conversation with Carmen at church, but she approached him and asked him if he had made a decision yet. She reiterated her need for the job and appealed to him to consider the welfare of her two small children, for whom she was the sole means of support.

WILL THE REAL LUPE GARZA PLEASE STAND UP?

TEACHING NOTE

Case Overview

Mark Solomon is one of four human resource specialists at RW Printing, a printing plant that is part of a national corporation. The plant routinely hires temporary semi-skilled workers to more easily meet cyclical or sporadic production needs. Many of these temporary workers are immigrant workers from Mexico. To meet the production demands of a recently acquired long-term contract, RW Printing needs to augment the full-time permanent work force. Many times these semi-skilled positions are filled with well-qualified workers who have been temporary workers for RW Printing. The pool of interviewees has been selected and Mark has just begun interviewing the candidates for this permanent position, one of whom Mark recognizes from his church, Carmen Mendoza. However, the name that Carmen uses at work is different than the name she uses at church. She explains to Mark that she goes by Lupe Garza at work because she is illegal and is using someone else's Social Security card. She begs Mark for the job explaining that she is a single mother and needs this job to support her children.

This case presents Mark with an ethical dilemma. Should he overlook what he knows about Lupe (Carmen) and hire her to benefit her and the company? Should he report what he knows? Students are asked to carefully evaluate their personal framework for making ethical decisions and to make a recommendation to Mark and determine if the company or Mark is violating any laws related to hiring immigrants.

This case is appropriate for undergraduate or graduate classes in human resources, business law, or ethics in business.

Learning Objectives

Students will be expected to:

1. Understand and apply theoretical models to making ethical business decisions.
2. Evaluate their personal framework for making ethical decisions.
3. Determine if any laws have been violated related to employing immigrants.

Questions

1. Mark has conflicting loyalties. What are those loyalties? What are Mark's choices? Mark had several choices. He could look the other way and hire a person with a proven track record on the job. This would fill the job, which was a high priority. Further, it was unlikely that a more qualified candidate could be found within the time frame. It seemed that many others were looking the other way to fill the positions, so the likely repercussions of such a choice would be minimal.

Another alternative would be to leave the position as a temporary position, which would leave Lupe in her current position. Since she was currently employed by Miller Staff Services, they were responsible for her employment documents. This would minimize the liability of the company while still allowing the position to be staffed.

A third alternative would be to hire another person for the position, since there were other, albeit not nearly so qualified, candidates. This would have the likely result of forcing Lupe into unemployment, since her temporary position would have been eliminated. With two small children to feed, and not being legally able to work, it was likely that this would be a difficult decision to live with. However, the human resources structure was such that, once the job was posted, it had to be filled unless no qualified candidates were available.

If either the second or the third alternative were selected, Mark would also need to decide whether or not to report to the authorities what he has been told about the employment of illegal immigrants within the company.

2. Analyze the situation using the ethical theories of utilitarianism, deontology, and virtue ethics.

Utilitarianism

The moral standard of utilitarianism requires us to consider the consequences of an act for all those affected by it. According to this principle, the right decision to make is based on the alternative that it is likely to achieve the greatest good overall—the greatest good for the greatest number. As a decision maker, Mark would compare the harms and benefits of an action not just for himself, but for all of those who are affected by the decision. The utilitarian framework also asks Mark to consider not only immediate and direct consequences, but also consequences that are foreseeable into the future.

If Mark approaches this decision from this cost-benefit perspective, he must consider who loses and who wins if he does or does not hire Lupe. The company loses because Lupe is a qualified temporary worker with the company, and qualified temporary workers are difficult to find. What if the company is not able to find well-qualified temporary workers, such as Lupe? Would the company be able to continue to survive? Lupe will most directly lose because she needs employment to support her children—she is a single mother with two small children. Lupe has worked for the company in the past, and has been told by Sarah Jones that she will get the job. What will happen to Lupe's family? Will they have to return to Mexico, where her standard of living could be much lower than here in the U.S.? Mark will have to decide if more weight is given to each of the possible consequences depending on who is affected.

Deontology

Deontological ethics is based on the universal principles of respect for persons and property, fairness, and truthfulness. The 18th century German philosopher Immanuel Kant ---- that a person should never lie, even when lying seems to produce a good result. Using this theoretical framework, called the *categorical imperatives*, a person is bound to a set of absolute rules for right behavior, without exception. The first of these imperatives states that people should be willing to live in a world where the same actions would be taken for same situation whenever or wherever the situation arose. According to Kant, for example, there is never a good reason to lie. Kant also states that people's intrinsic value should be respected, and that they should not be used as a means to reach our own goals or meet our purposes.

The question "what rule determines what I ought to do in this situation?" becomes "what rule ought to universally guide action?" What we must do in any situation of moral choice is act according to a maxim with which we would desire everyone to comply. In this incident, following Kant's philosophy, Mark would tell his supervisor and report what he knows to the authorities.

Virtue Ethics

The premise of virtue ethics asks us to look at what human beings are capable of being and how habits of good character can be developed. This component of thinking is based largely on the philosophy of Aristotle who argued that people develop their moral guideposts through training—training through our social environment, including family and community. The reactions to ethical dilemmas are not a result of making the correct choice given a series of events or facts, but are habits of living that allow a person to make worthy decisions without assessing the pros and cons, or measuring their behaviors to a set of abstract rules. If we follow the premise of virtue ethics for this situation, Mark would likely follow the virtues of honesty and the rule of law. By the same token, however, if his ethical framework placed the "do no harm" virtue above the virtues of honesty and rule of law, he may decide to look the other way, since nobody would actually be harmed with this decision and, in fact, all key stakeholders might benefit.

You may also want to have a discussion centered around the idea of *moral pluralism*. This view espouses that no single moral principle or theory of what is right and wrong can be applied in all situations. According to moral pluralism, the correct action is one based on appropriate consideration of rules or principles or theories, none of which provides guidance for deciding when to use a particular theory or principles.

In the class discussions, you may find that students have differing ethical frameworks. While the virtues they espouse might be similar, students will demonstrate that they have different priorities for those virtues and the prioritization becomes an important factor in the decision-making in this case. These priorities are based on their own set of personal values, and they must live with the consequences of their actions.

You will want to ask students to apply the ethical models that you are discussing in your class to this incident.

3. What law(s), if any, was the company violating? What laws(s), if any, was Mark violating?

The Immigration Reform and Control Act (IRCA) makes it unlawful for an employer to recruit or hire any alien not authorized to work in the U.S. (8 U.S.C. §1324a)¹ Employers are legally obligated to examine documents that verify new employees are eligible to work in the U.S. The IRCA also established civil and criminal penalties for hiring illegal aliens. In this case, the documents that Mark was able to briefly view were officially issued by government agencies.

However, under IRCA, it is also illegal to continue to employ someone after learning that the employee has become an unauthorized alien. Violations of IRCA are punishable by civil and criminal penalties.²

It is not clear from the incident how wide spread this “common” practice is within the company. Mark has heard the accusation only from Lupe. In fact, she may be telling him this so that he feels more comfortable going along with the practices of others in the company.

Mark and RW Printing probably did not violate the law by hiring Lupe. He is required only to ask for and review documentation that documents eligibility to work in the U.S at the time of employment. The I-9 form, which verifies employment eligibility states that the employer must “Examine one document from List A or examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).”³ The employer is not required by law to determine the authenticity of the documents being presented by the employee, only that they appear to be authentic. In this situation, Lupe was never hired; therefore, she never had to present official documents to Mark. The documentation was shown to Mark; however, it was not part of the hiring process. This was a preliminary interview

Once Mark learned that Lupe was not authorized to work in the U.S., however, he and RW should terminate Lupe’s employment. Even though RW Printing could maintain that the illegal immigrants were technically employed by an outside contractor, it is becoming increasingly difficult to use that as a civil and criminal defense. Refer to the case of Wal-Mart, who routinely employed illegal aliens as janitors from outside contractors. Wal-Mart contends they did not know that the employees were illegal.⁴ However, the workers say that the executives at Wal-Mart knew that the janitors were undocumented workers and looked the other way because the workers were paid low wages.⁵ The U.S. District Court is taking a closer look at what has become a common practice of using outside contractors to employ illegal immigrants at low wages. RW Printing could be guilty of hiring illegal aliens if they knowingly hire undocumented workers from the outside contractor.⁶

4. Mark may feel morally driven to call attention to the wrongdoing that he sees at his workplace. He must decide if bringing attention to this “common” practice is worth the risk of alienating others at work and bringing damaging repercussions to the company and the employees. He is caught between conflicting loyalties—to his employers and to his own conscience. He must decide if he should become a whistleblower. However, whistle-blowing can wreak havoc on the reputation of an organization and on the career of the whistleblower. Should Mark “blow the whistle” on his company and report them to the USCIS¹?

While Mark may feel uncomfortable with the knowledge that illegal workers might be employed in the plant, whistle-blowing might not apply here, since the company itself was clearly not complicit in the situation. In fact, the company has strict rules concerning employment practices and makes every effort to follow the law. It is clear, however, that some individuals are aware of the situation and have been looking the other way. An additional dilemma, therefore, is how Mark might address the issue and point out

wrongdoing on the part of certain individuals without implicating the company in any wrongdoing. Should Mark feel obligated to report the temporary agency that is in possession of the official documents? The situation is further complicated by the fact that Mark really has no solid evidence of any of these allegations other than a statement by one person who is not even an employee and informally viewing two documents, which he had no opportunity to verify. He might possibly salve his conscience by reporting the incident to his superior, thus taking the responsibility for action from him and passing it to another.

Classroom Exercise

As a classroom exercise, you may want to have the students perform an Ethical Analysis on this problem. To do this, have the students (either in small groups or individually) do the following:

1. Identify and describe the true ethical dilemma in the case
2. Define the conflict(s) and identify the associated values
3. Identify the stakeholders
4. Identify the options available
5. Identify the potential consequences of each of the options, including short term and long term consequences

Going through this exercise helps students process the ethical dilemma in a structured way and creates the basis for a good classroom discussion of the analysis results. You may stop short of having them make a decision so that the whole class can discuss and arrive at a collective decision. Alternatively, you may have them perform the analysis and then make and justify a decision based upon it, using a subsequent class discussion to compare decisions.

Epilogue

Mark made the decision not to hire Lupe, but he did not report any of the practices to the USCIS. He did, however, promptly report the interaction with Lupe, along with his decision not to hire, to his supervisor. He has since accepted another HR position at another company in a different location.

ADDITIONAL RESOURCES

Bennett-Alexander, D. D. & Hartman, L. P. (2004). *Employment Law for Business*, 4th ed., Irwin McGraw Hill.

Halbert, T. & Ingulli, E. (2003). *Law & Ethics in the Business Environment*, 4th ed., Thomson South-Western.

Hoffman, W. M., Frederick R. E., & Schwartz, M. S. (2001). *Business Ethics: Readings and Cases in Corporate Morality*, 4th ed., McGraw Hill.

McAlister, D. T., Ferrell, O. C. & Ferrell, L. (2005). *Business and Society: A Strategic Approach to Social Responsibility*, 2nd ed., Houghton Mifflin.

ENDNOTES

- ¹ The U.S. Citizenship and Immigration Services replaced the old Immigration and Naturalization Service when the Department of Homeland Security was created.
- ² USCS § 1324a Title 8. Aliens and Nationality, Chapter 12. Immigration and Nationality Adjustment and Change of Status: General Penalty Provisions
- ³ <http://uscis.gov/graphics/howdoi/faqeev.htm>
- ⁴ Riley, M. (2004, September 6). A new tack against Wal-Mart. *The Denver Post*, Pg. C-01.
- ⁵ Diamond, M. L. (2004, October 21). Wal-Mart janitors take case to court. *Asbury Park Press*.
- ⁶ Buckley, N. (2004, September 4). Wal-Mart seeks to settle immigrant probe. *The Financial Times*, London, England, pg. 9.