California Bill Puts Employers Smack in the Middle of National Immigration Debate

Insights
3.27.17

Since the election of President Trump, the California Legislature has been vocal and active in efforts to resist announced or anticipated actions of the Trump administration. This includes efforts to make California a "sanctuary state," measures to protect California's environmental standards, legislative resolutions and statements against the travel ban and other Trump proposals, and actions to provide services and support to immigrants in California.

It was anticipated the Legislature would similarly respond in some fashion to address issues impacting immigrant workers. With the recent introduction of Assembly Bill 450 by Assemblymember David Chiu (D-San Francisco), we now have a clear sense of what that response will look like.

The bill, jointly sponsored by the California Labor Federation and SEIU, is entitled the "Immigrant Worker Protection Act."

In a statement accompanying introduction of the bill, the author stated:

"Trump's threats of massive deportations are spreading fear among California workers, families, and employers. AB 450 declares California's determination to protect our economy and the people who are working hard to contribute to our communities and raise their families in dignity. I'm proud to author this legislation which goes beyond California's existing defense of immigrants to offer new legal protections for individuals in our workplaces. At the same time, AB 450 offers employers clarity about what to do when ICE agents target their places of business with indiscriminate raids."

So What's in AB 450?
AB 450:

- Requires employers to ask for a judicial warrant before granting access to the workplace by federal immigration enforcement (ICE) agents.
- Requires employers to insist on a subpoena before granting ICE access to employee records, including I-9 forms.
- Requires employers to provide to each employee (and their representative) written notice within 24 hours of the employer receiving notice of immigration worksite enforcement action, including

I-9 audits and workplace raids.

- Requires employers to notify the Labor Commissioner of immigration worksite enforcement actions and provide access to the worksite. At her discretion, the Labor Commissioner may conduct a wall-to-wall investigation of the worksite.
- Authorizes the Labor Commissioner to access the place of employment during an immigration worksite enforcement action to provide affected employees with specified information.
- Requires employers to notify the Labor Commissioner before conducting a self-audit of employment eligibility forms and grant the Labor Commissioner access to the worksite (where she may conduct a wall-to-wall investigation).
- Provides that if the Labor Commissioner determines that an employee is necessary to conduct an investigation, she may issue a certificate stating that the employee has submitted a valid complaint and is cooperating in the investigation and prosecution of alleged violations of the law. (This appears designed to stave off any ICE deportation activity.)

Violations of AB 450's requirements would be punishable by a civil penalty of between $10,000 and $25,000 for each violation.

California Has Led the Way on Legislation Related to Immigrant Workers

Despite the fact that immigration is primarily an issue of federal law, California has been very aggressive in passing legislation over the past few years intended to protect immigrant workers.

For example, legislation was enacted in 2014 to prohibit employers from engaging in retaliation against immigrant employees for exercising protected rights. (Labor Code Section 1019). California employers are also prohibited from taking adverse action against employees for "updating" their personal information based on a lawful change in name, social security number, or federal work authorization document. (Labor Code Section 1024.6).

California law also makes it unlawful (except as required by federal law) for California employers to use E-Verify to check the work authorization of an existing employee, or an applicant, in a manner not required under federal law. (Labor Code Section 2814). And legislation enacted just last year prohibits specified document abuse – such as requesting more or different documents than required on the I-9 form, or refusing to honor documents that on their face reasonably appear to be genuine. (Labor Code Section 1019.1). While both protections are available under federal law, California has taken it a step further and codified these protections under state law. Violations of most of these provisions include a $10,000 penalty per violation, plus possible loss of an employer's business license.

Employers Caught in the Middle

States like California that develop favorable immigration protections can create complex questions for employers attempting to comply with both state and federal law. On the one hand, federal law prohibits employers from knowingly hiring individuals who are not authorized to work, hiring an

individual without verifying identity and work authorization, or continuing to employ workers they know or should know are not authorized to work. On the other hand, because of the state law provisions described above, employers in California need to be cautious so as not to be too zealous in applying immigration laws and violating one or more state law prohibitions.

It's a delicate balance to navigate between federal and state law, leaving many employers feeling like they are caught in a difficult spot when it comes to larger conflicts and national debates over immigration and immigration reform. In other words, it seems as if President Trump and California are on an inevitable collision course when it comes to immigration issues.

Well, buckle your seatbelts! With the introduction of AB 450, California employers will be drawn squarely into the middle of this conflict between protective state law and aggressive federal immigration enforcement.

What's Next

AB 450 raises major implications for the employer community, and should be monitored closely as the legislative session progresses. AB 450 has been referred to the Assembly Committee on Labor and Employment and the Assembly Judiciary Committee. The bill will be heard in committee in April and, should it advance, will move through the legislative process over the next several months. The bill will need to be sent to the Governor by September 15 in order to be acted upon this year.

Related People

Benjamin M. Ebbink
Partner
916.210.0400
Email